129-70

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 135.

ROBERT H. ANDERSON, APPELLANT,

vs.

HENRY T. MILLER AND WILLIAM MITCHELL, PARTNERS, UNDER THE FIRM-NAME OF H. T. MILLER AND COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED OCTOBER 16, 1885.

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1 In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ROBERT H. ANDERSON, Complainant,
vs.
HENRY T. MILLER and WILLIAM MITCHELL, Defendants. } No. 341.

RICHMOND, VA., *June 12th*, 1885.

Be it remembered that heretofore, to wit, on the 28th day of July, A. D. 1883, came the complainant in the above-entitled cause and filed in the clerk's office of the circuit court of the United States for the eastern district of Virginia his bill of complaint against the defendants; which bill, with the exhibit therewith, is as follows:

Bill of Complaint.

United States Circuit Court in and for the Eastern District of Virginia. In Equity.

ROBERT H. ANDERSON
vs.
HENRY T. MILLER & WM. MITCHELL.

To the honorable the judge of the United States circuit court in and for the eastern district of Virginia:

2 Robert H. Anderson, of the city of Richmond, in the county of Henrico and State of Virginia, and a citizen of Richmond, Virginia, brings this bill of complaint against Henry T. Miller and William Mitchell, both of the city of Richmond, in the county of Henrico and State of Virginia, and citizens of the said State of Virginia, constituting the firm of Henry T. Miller & Co., doing business at Richmond, in the county, State, and district aforesaid.

And thereupon your orator complains and says that heretofore and before the 10 day of October, 1882, that your orator, R. H. Anderson, being a citizen of the United States, residing in the city of Richmond and county and State aforesaid, was the true, original, and first inventor of new and useful improvement in drawers, &c., not known and used by others before, and not having been in public use or on sale for more than two years prior to his application for a patent therefor, and in fact not having been in use or on sale at or for any time prior to his application for said patents; and your orator shows unto your honors that, so being the inventor of said improvements, he made application to the proper department of the Government of the United States for letters

3 patent in accordance with the then existing acts of Congress and duly complied in all respects with the conditions and requirements of said acts, and that on the 10th day of October, 1882, letters patent of the United States, numbered 265,733, signed, sealed, and executed in due form of law, for the said improvements or discovery were issued to the said R. H. Anderson, your orator,

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HENRY T. MILLER & WM. MITCHELL.

To the honorable the judge of the United States circuit court in and for the eastern district of Virginia:

2 Robert H. Anderson, of the city of Richmond, in the county of Henrico and State of Virginia, and a citizen of Richmond, Virginia, brings this bill of complaint against Henry T. Miller and William Mitchell, both of the city of Richmond, in the county of Henrico and State of Virginia, and citizens of the said State of Virginia, constituting the firm of Henry T. Miller & Co., doing business at Richmond, in the county, State, and district aforesaid.

And thereupon your orator complains and says that heretofore and before the 10 day of October, 1882, that your orator, R. H. Anderson, being a citizen of the United States, residing in the city of Richmond and county and State aforesaid, was the true, original, and first inventor of new and useful improvement in drawers, &c., not known and used by others before, and not having been in public use or on sale for more than two years prior to his application for a patent therefor, and in fact not having been in use or on sale at or for any time prior to his application for said patents; and your orator shows unto your honors that, so being the inventor of said improvements, he made application to the proper department of the Government of the United States for letters

3 patent in accordance with the then existing acts of Congress and duly complied in all respects with the conditions and requirements of said acts, and that on the 10th day of October, 1882, letters patent of the United States, numbered 265,733, signed, sealed, and executed in due form of law, for the said improvements or discovery were issued to the said R. H. Anderson, your orator,

whereby there was secured to him, his heirs, executors, administrators, and assigns, for the term of seventeen years from the 10th day of October, 1882, the full and exclusive right of making, using, and vending this invention or discovery throughout the United States and the territories thereof, as by reference to said letters patent or a certified copy thereof, hereunto annexed, to which for greater certainty your orator craves leave to refer, will more fully appear.

And your orator further shows unto your honors that he has extensively applied the said improvements to practical use and has had long and unquestionable possession of the same, and that but for the infringement complained of he would be in full and exclusive enjoyment of the rights and interests acquired by him
4 as aforesaid under the letters patent hereinbefore mentioned, and that the exclusive rights and interests granted in said letters patent are of great value to your orator, and that your orator is entitled to all profits and damages occasioned by the infringement of said letters patent by the manufacture, sale, or use of drawers in violation of said letters patent, and is by law entitled to sue for and receive the same to his own use.

And your orator further sheweth unto your honors that the defendants herein, well knowing all the facts hereinbefore set forth, as he is informed and believes, are now using said patented improvements, or improvements in some parts thereof substantially the same in construction and operation as in the letters patent mentioned, the exclusive right and privilege to make, use, and vend which, throughout the United States and territories thereof, are thus by law vested in your orator.

And so it is, may it please your honors, that the said defendants, as your orator is informed and believes, without the license of your orator, against his will, and in violation of his rights, have made, used, and vended, and intend still to continue to make, use,
5 and vend, the said improvements, or improvements in some parts thereof substantially the same in construction and operation, within the eastern district of Virginia, all of which is in violation of said letters patent; and that by the use of said patented improvements, & etc., as aforesaid, the defendants have made, used, and vended large quantities of drawers, and your orator believes and avers that the defendants herein have derived and received and are still deriving and receiving from the making, using, and vending of drawers described and claimed in the letters patent aforesaid, or substantially similar thereto in construction and operation, great gains and profits, but your orator is ignorant of the amount thereof and prays that the defendants may be required to make disclosures of all such gains and profits.

And your orator further avers that the defendants continue to make, use, and vend said improvements, & etc., in drawers patented as aforesaid, and refuse, though warned and requested so to do, to desist from such making, using, and vending, and to pay to your orator such gains and profits; by means whereof the defendants have injured and are still greatly injuring your orator, and

6 have deprived and are still depriving your orator of and have prevented and are still preventing your orator from receiving the gains and profits from the use of the exclusive right to make, use, and vend the inventions and improvements claimed in said letters patent, which your orator otherwise and but for such wrongful acts of the said defendants would have obtained and received.

To the end, therefore, that the defendants may, if they can, show reason why your orator should not have the relief hereby prayed, and that they may make full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their several and respective knowledge and remembrance, information, and belief, full, true, and perfect answers make to the several allegations of this bill, and especially to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer—that is to say—

1. Whether they are not citizens of the United States, residents of Richmond, in the State of Virginia, and engaged in the business of the manufacture and vending of drawers for the clothing trade in the city of Richmond and in the district and State aforesaid.

7 2. Whether they have not made, used, and vended or have not been making, using, and vending and are not still making, using, and vending in said business drawers or like garments having a reinforced seat by means of a single piece of material extending from a point where the back seam terminates to the opposite sides of the front facings, substantially as described in said letters patent No. 265,733.

3. Whether they have not made, used, and vended and have not been making, using, and vending and are not still making, using, and vending in said business drawers or like garments having a combination of the reinforcing seat piece with the front facing and waist-band facing, substantially as is described in said letters patent No. 265,733.

4. Whether they have not made, used, and vended or have not been making, using, and vending and are not still making, using, and vending in said business drawers or other analogous garments having a reinforced seat on the inside and a reinforced front on the outside, the first running to the seam and the latter running from front to rear, overlapping the said reinforced seat on the inside and connected therewith by stitching, thereby having the rein-

8 forcement of the seat, & etc., as described in letters patent No. 265,733, Fig. 1, from B^4 through B^2 to B^3 B^3.

5. Whether they have not made, used, and vended or have not been making, using, and vending and are not still making, using, and vending in said business drawers or other like garments having the principles of reinforcement of the seat, & etc., or any part thereof as described in letters patent No. 265,733 or devices in combination, effect, and result substantially similar thereto; and, if not, how the same differs therefrom.

6. Whether they have not made large gains and profits from the

use of such patented drawers or improvements on drawers some parts of which are substantially the same in construction and operation as those described in letters patent No. 265,733; and, if so, to what amount.

And now your orator further prays that the defendants may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator as above and restrained from any further violation of said rights; that your honors may grant a writ of injunction restraining the defendants from any
9 further manufacture, sale, use, or vending in any manner of said patented improvements or any part thereof in violation of the rights of your orator as aforesaid, and that the improvements now in the possession or use of the said defendants may be destroyed or delivered up to your orator for that purpose; and also that your honors, upon the rendering of the decree for the perpetual injunction as above prayed for, may proceed to assess or cause to be assessed under your direction, in addition to the gains and profits to be accounted for by the defendants aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment under the circumstances of the wilful and unjust infringement by said defendants as herein set forth; and your orator prays also for a provisional or preliminary injunction, and that the said Henry T. Miller and Wm. Mitchell may be made parties defendant to this bill of complaint and be required to answer the same; and your orator does not require, but expressly waives, affidavit to said answer, and for such other relief as the equity of the case may require and to your honors may seem meet.

10 May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also writs of subpœna of the United States of America, directed to the said Henry T. Miller and Wm. Mitchell, commanding them to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to your honors shall seem meet and be required by the principles of equity and good conscience.

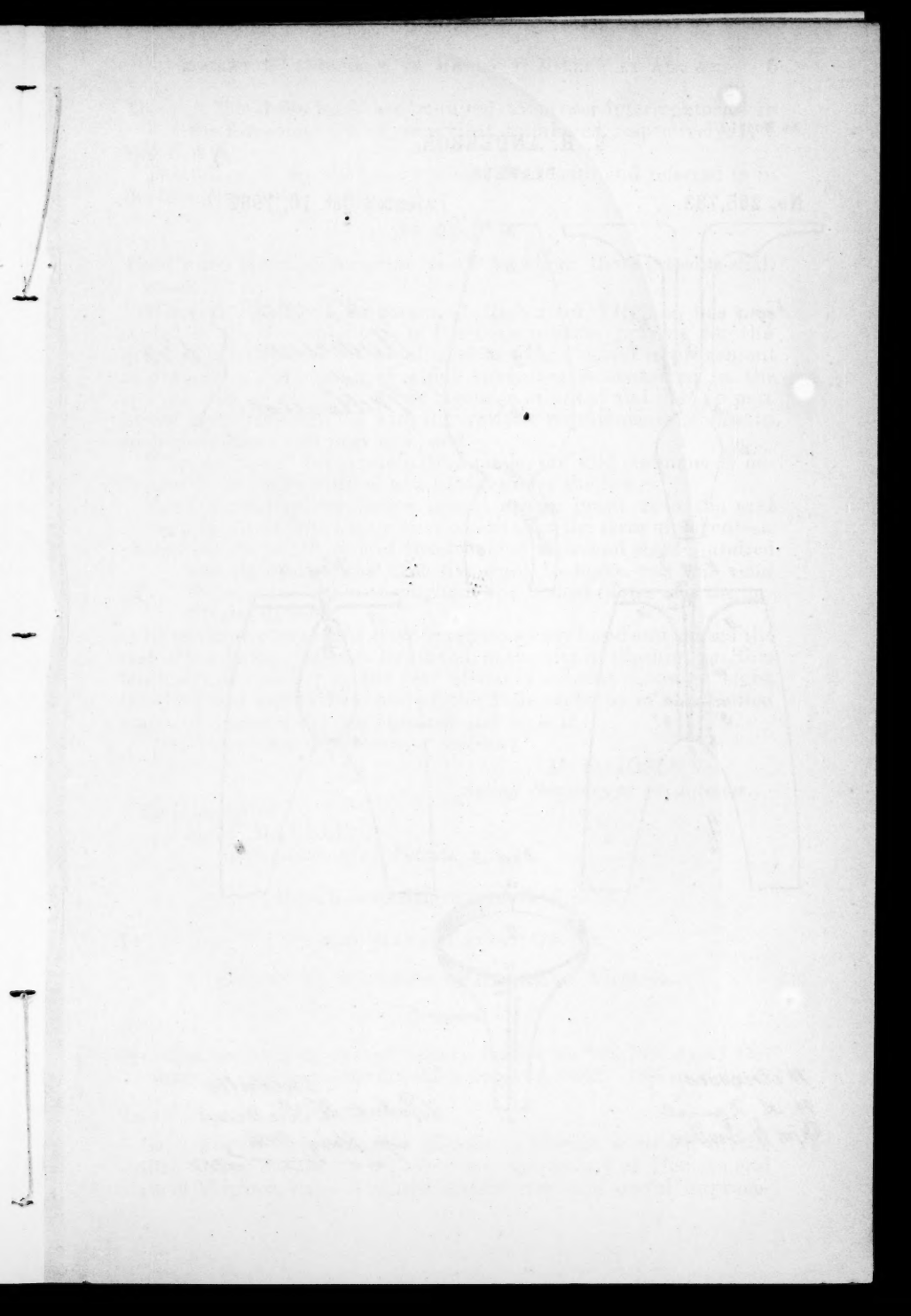
McGUIRE & ELLETT,
Solicitors and Counsel for R. H. Anderson.

UNITED STATES OF AMERICA,
Eastern District of Virginia, } *ss:*

Robert Hunter Anderson, being duly sworn, deposeth and saith that he is the complainant in the foregoing bill named, and he has read the same and knows the contents thereof; that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

Sworn to before me this 23d day of July, 1883.

TAZEWELL ELLETT,
Notary Public for the City of Richmond, in the State of Virginia.



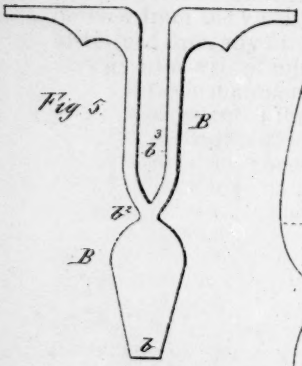
(No Model.)

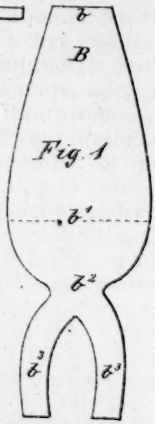
R. H. ANDERSON.

DRAWERS.

13

No. 265,733. Patented Oct. 10, 1882.





No. 135.
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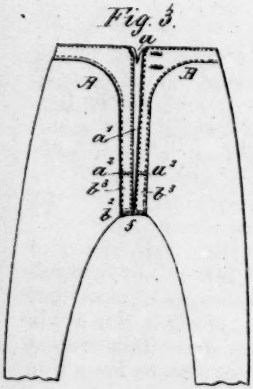
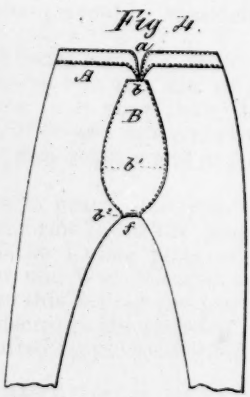
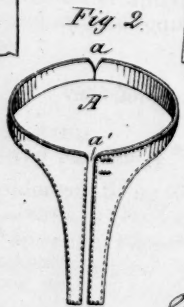
& Millerstal
p. 13.







Witnesses.
H. A. Daniels
Wm S Poulter

Inventor
Robert H. Anderson
per Henry Orth
Atty

11 The defendants are required to answer interrogatories in the foregoing bill of complaint, numbered, respectively, 1, 2, 3, 4, 5, & 6.

The following are the letters patent filed with and referred to in the foregoing bill:

No. 265,733.

The United States of America to all to whom these presents shall come:

Whereas Robert H. Anderson, of Richmond, Virginia, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in drawers, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Robert H. Anderson, his heirs or assigns, for the term of seventeen years from the tenth day of October, one thousand eight hundred and eighty-two, the exclusive right to make, use, and vend
12 the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this tenth day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

[Seal Patent Office United States of America.]

M. D. JOSLYN,
Acting Secretary of the Interior.

Countersigned:
E. M. MARBLE,
Commissioner of Patents.

(Here follows diagram marked p. 13.)

14 UNITED STATES PATENT OFFICE.

ROBERT H. ANDERSON, of Richmond, Virginia.

Drawers.

Specification forming part of Letters Patent No. 265,733, dated October 10, 1882; application filed June 24, 1882. (No model.)

To all whom it may concern:

Be it known that I, Robert Hunter Anderson, a citizen of the United States, residing at Richmond, in the county of Henrico and State of Virginia, have invented certain new and useful improve-

ments in the manufacture of drawers or analogous garments; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings and to letters or figures of reference marked thereon, which form a part of this specification.

My invention relates to improvements in the manufacture of drawers or analogous garments; and it consists, first, in the method of re-enforcing the seat by means of a single piece of material extending from a point where the back seam terminates to the opposite sides of the front facings; second, in the combination of the re-enforcing seat piece with the front facing and waistband or waistband facing, as hereinafter more fully described, and as shown in the accompanying drawings, in which—

Figure 1 shows the pattern of the re-enforcing piece for the seat, and Fig. 5 shows a modified construction thereof. Fig. 2 shows in perspective the waistband facing and the front facing. Fig. 3 shows so much of a pair of drawers as will be necessary to illustrate my invention, the same being shown by a front view; and Fig. 4 is a back view thereof.

Like letters of reference are employed to indicate like parts wherever such may occur in the above figures of drawings.

A represents the waistband or waistband facing, that extends from opposite sides of the opening *a* in the back of the drawers to the from opening a^1, extending down along said opening to a point some distance above the fork *f* of the drawers. The waistband and a portion of the front facing, as will be seen by Figs. 2, 3, and 4, is made of two pieces, though it may be made of more than two pieces, and its terminals a^2 are jointed to the re-enforcing piece B of the seat. This re-enforcing piece B is made of one piece of material and of the shape shown in Fig. 1, the narrow square edge *b* being sewed across the back seam immediately below or at the point where the back opening or slit in the waistband terminates, thus preventing the tearing of this opening along the back seam, which so frequently occurs where no provisions are made to avoid it. The body B^1 of the re-enforcing piece B is gradually enlarged from the straight narrow portion *b* to a point, b^1, so as to practically cover the seat of the garment. From the point b^1 the re-enforcing piece B again contracts and forms the neck b^2, that extends over the fork of the garment, said narrow portion b^2 terminating in two tongues, b^3 b^3, that extend upward along the opposite edges of the front opening, and form a portion of the front facing, the said tongues b^3 being sewed to the extremities a^2 of the front facing. By means of this peculiar construction of re-enforcing piece B, I not only materially strengthen the seat of the garment by a double thickness of material, but also the fork thereof, and provide a convenient means to prevent the tearing out of the front and back openings, a^1 *a*, as will be readily understood.

Of course it will be understood that I do not limit myself to the application of this re-enforcing piece to drawers or to the outside of the seat of drawers or to making the said re-enforcing piece

17 of one piece of material, as it is evident that it (the re-enforcing piece) may be applied to overalls or pantaloons, and that it may be applied to inside of the seat as well as the outside; and, lastly, that said re-enforcing piece, to save material, may be made in sections sewed together.

I have above described a re-enforcing piece for the seat of garments such as setforth, constructed in such manner as will result in the greatest economy of the goods used. When, however, this economy is no object, I prefer to construct the said piece as shown in Fig. 5, and, as will be seen, the tongues b^3 b^3 are here extended and cut to form the front portion of the waistband, the whole of the pattern being cut from a single piece of goods, which will impart to the garment a much handsomer appearance, as there is no seam across the facings along the front opening.

Having now described my invention, what I claim is—

1. A re-enforcing piece, B, for garments such as described, consisting of a seat part having the contracted portion or neck b^2 and the two diverging tongues b^3, and adapted to be applied as described.

2. A re-enforcing piece constructed to re-enforce the seat of a pair of drawers or other like garment and constitute the facing of
18 the front opening and a portion of the waistband, substantially as and for the purpose specified.

3. The combination, with a pair of drawers or other like garment, of the re-enforcing piece B, constructed and having the configuration described and shown, and applied to each garment, substantially as specified.

In testimony whereof I affix my signature in presence of two witnesses.

ROBERT HUNTER ANDERSON.

Witnesses:
JOS. B. DAVIS.
RO. N. HENRY.

And on the same day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Norfolk, in said district, on the 28th day of July, A. D. 1883.

ROBERT H. ANDERSON
vs.
HENRY T. MILLER and WILLIAM MITCHELL. } In Equity.

The bill and exhibits in this cause having been this day presented and read, it is ordered that the same be set for hearing on the
19 2d day of August, 1883, at Richmond, upon the motion of the said plaintiff for a preliminary injunction, provided that a copy of the said bill and of this order be served upon thesaid defendants on or before the 30th day of July, 1883.

RO. W. HUGHES, *Judge.*

And on another day, to wit, on the 30th day of July, A. D. 1883, a chancery subpœna issued from the clerk's office of the said circuit court of the United States for the eastern district of Virginia.

Said subpœna, together with the marshal's return thereon, is as follows, to wit:

20 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

The President of the United States of America to Henry T. Miller and William Mitchell, constituting the firm of Henry T. Miller & Co., doing business at Richmond, in the State of Virginia, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America for the eastern district of Virginia, at the court-room, in the custom-house, in the city of Richmond, in said district, on the first Monday in the month of September next, to answer the bill of complaint of Robert H. Anderson, of Richmond, in the State of Virginia, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of Virginia to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 30th day of July, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the 108th.

[Seal United States Circuit Court, Eastern District of Virginia.]

—— ——, *Clerk.*

MEMORANDUM.—The above-named defendants are hereby notified that unless they enter their appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

M. F. PLEASANTS, *Clerk.*

21 [Endorsed:] No. —. Circuit court of the United States, eastern district of Virginia. —— —— *vs.* —— ——. Chancery subpœna. Returnable ——, A. D. 188–. —— ——, clerk. Filed ——, A. D. 188–. —— ——, clerk. —— ——, comp't's sol.

U. S. MARSHAL'S OFFICE,
RICHMOND, VA., ——, 188–.

I hereby depute —— —— as special deputy to execute this writ and make return in due form.

—— ——,
U. S. Marshal.

Executed this 30th day of July, 1883, by delivering to Henry T. Miller and Wm. Mitchell, the within-named defendants, in person a true copy of this writ, and also to H. T. Miller a copy of bill & order.

THOS. E. BALLARD,
Special Deputy Marshal.

22 And on another day, to wit, on the 2nd day of August, 1883, came the defendants in this cause, by counsel, and filed in the clerk's office of said court their answer to the complainant's bill of complaint, which is as follows, viz:

Answer.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ROBERT H. ANDERSON

vs.

HENRY T. MILLER & WILLIAM MITCHELL, Partners under the Name of H. T. Miller & Co.

The answer of Henry T. Miller and William Mitchell, partners trading under the name of H. T. Miller & Co., to the bill in equity exhibited against them by R. H. Anderson.

These respondents, without waiving the demurrer, answer this bill as follows:

They deny, traverse, and put in issue every allegation of the bill as fully as if the same were set forth and denied in detail.

Further answering, they say it is not true that said Anderson was the true, original, and first inventor of the improvement in drawers for which he got the patent in the bill mentioned. It is not
23 true that the improvement had not been in public use or on sale more than two years prior to his application. Respondents aver, on the contrary, drawers reinforced as described in his letters patent had been made and in public use and on sale by sundry and divers persons for many years prior to his application.

Respondents deny that they are using or ever have used the complainant's patent or any part thereof, identically or substantially. These respondents say that Henry T. Miller and Henry T. Miller & Co. have been manufacturing one particular kind, and only one particular kind, of reinforced drawers for more than five years hitherto continuously, a specimen of which drawers manufactured by them is herewith filed as Exhibit "A," and prayed to be taken as part hereof, and they solemnly aver that these are the only kind of reinforced drawers that have been manufactured by them or either of them during the last five years.

They also file, as Exhibit "B," a pair of drawers of the manufacture of the complainant.

They also file, as Exhibit "C," a pair of drawers manufactured by Levis under patent of March 4th, 1879.

They also file the affidavits of their two cutters, F. J. Dean and Joseph M. Cox, all of which they pray to be taken as part of this bill.

24 Respondents further answer and say, in the first place, that they utterly deny and repudiate the allegation of the bill that the drawers manufactured by them interfere with or infringe upon the patent rights of the plaintiff in any way, and in the

second place that even if the drawers manufactured by them are either identically or substantially the same as those manufactured by the complainant, he is entitled to no relief whatever against them, because these respondents are prepared to prove that Henry T. Miller & Co. and Henry T. Miller have hitherto continuously for over five years manufactured the identical reinforced drawers filed as Exhibit "A," and that for over four years prior to the application for the said patent they used and sold reinforced drawers of the pattern and design of those now filed as Exhibit "A" and none others.

In answer to the complainant's interrogatories they say:

1. To the first interrogatory they answer: Yes.
2. To the second interrogatory they answer: No.
3. To the third interrogatory they answer: No.
4. To the fourth interrogatory they answer: No.
5. To the fifth interrogatory they answer: No.
6. To the sixth interrogatory they answer: No.

25 Now, having fully answered the bill of complainant, they pray to be hence dismissed with their costs in this behalf expended.

H. T. MILLER & CO.,
By Counsel.

JOHN S. WISE, *P. D.*

CITY OF RICHMOND, *State of Virginia,* } *To wit:*

This day personally appeared before me, a notary public, in my city aforesaid, Henry T. Miller, personally known to me, who, being duly sworn, made oath that he is one of the firm of Henry T. Miller & Co., defendants in the above-named cause, and that the allegations of the foregoing answer are true so far as they are made of his own knowledge, and so far as made from knowledge derived from others he believes them to be true.

Witness my hand this first day of August, 1883.

GEORGE A. HILL,
Notary Public.

26 And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 25th day of July, A. D. 1884.

R. H. ANDERSON
vs.
H. T. MILLER & CO. } In Equity.

This cause came on this day to be heard and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that W. C. Truman be, and is hereby, appointed the special commissioner of this court in this cause to take the depositions of Charles Sizer, S. E. Bishop, and others, to be used

as evidence in this cause, and that he return the same properly authenticated, under his seal, unto this court *will* all convenient speed.

RO. W. HUGHES, *Judge.*

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said
27 district, on the 12th day of June, A. D. 1885.

ROBERT H. ANDERSON
vs.
HENRY T. MILLER & Co. } In Equity.

This day came this cause to be heard upon the complainant's bill and exhibits; the demurrer and answer and exhibits of the defendants; the joinder in said demurrer and replication to said answer; the depositions filed in the cause December 27th, 1883, August 13th, 1884, August 28th, 1884, October 1st, 1884; A. D. Irving's deposition, Feb'ry 21st, 1885; depositions filed April 3, 1885; the letter of Henry Orth, dated March 22d, 1884, filed without objection at the hearing; and on a motion made by complainant at the hearing to strike out the depositions of Cox, S. E. Blount, Lottie Blount, and of all other witnesses for defence who testified as to prior use of the alleged patented article—

1st. Because complainants claim that said depositions were illegally taken by a notary who was neither one of the exam-
28 iners of the court nor a special examiner appointed by the court for the purpose of taking said depositions.

2nd. Because the purpose and object of the testimony of the defence is to establish a prior patent, a want of novelty in the thing patented, and prior use of the same, and the defendants' answer fails to state the names of the prior patentees and the date of their patents, and also fails to state the names and residences of the persons alleged to have had prior knowledge of the thing patented and where and by whom it was used.

3d. Because of complainants having objected to same for want of the statutory notice.

And upon the agreement of parties to submit the whole matters of law and fact involved in the case to the decision of the judge, and upon the agreement to withdraw said demurrer and joinder, which is done, and was argued by counsel—

Whereupon the court doth adjudge, order, and decree as follows:

That the motion to strike out said depositions be, and the
29 same is hereby, overruled; that on the facts proved the defendants, by reason of prior use of the article manufactured by them in the bill and proceedings mentioned for a period of over two years prior to the granting of the patent to the complainant, are entitled to judgment.

Wherefore it is accordingly adjudged, ordered, and decreed that the bill of complainant be dismissed, and that the defendants recover of complainant their costs in this behalf expended, for which execution may issue.

This decree is entered in lieu of the decree herein, dated June 6th, 1885, which is hereby superseeded for informalities.

On motion of complainant, who desires to appeal, the execution of this decree is suspended for sixty days and an appeal is allowed him upon his entering into bond, conditioned as the law directs, before the clerk of this court, with security satisfactory to him, in the penalty of $200.00.

RO. W. HUGHES, *Judge.*

30 *Depositions on Behalf of Defendants, Filed December 27th, 1883, Referred to in the Final Decree in this Cause.*

The depositions of Joseph M. Cox and others, taken this 20th day of December, 1883, before George A. Hill, notary public, pursuant to notice hereto attached, at the office of John S. Wise, in the city of Richmond, State of Virginia, to be read as evidence in behalf of the defendants in a certain cause now pending in the circuit court of the United States for the eastern district of Virginia, wherein R. H. Anderson is plaintiff and Henry T. Miller and William Mitchell, partners trading under the firm name of Henry T. Miller & Co., are defendants.

No witnesses nor counsel appearing, and, by consent of counsel, signified beforehand, these depositions are adjourned until Thursday, December 27th, 1883, at ten o'clock a. m.

GEO. A. HILL,
Notary Public.

RICHMOND, *December 27th*, 1883—10 o'clock a. m.

Pursuant to adjournment, the taking of these depositions is resumed at the office of John S. Wise.

31 Present: John S. Wise, for respondents. No counsel present for complainant.

JOSEPH M. COX, a witness of lawful age, duly sworn the truth to speak, deposeth in answer to questions propounded to him by respondents' counsel as follows:

1st Question. State your name, residence, age, and occupation.

Answer. Joseph M. Cox; aged 31 years; reside 605 North 10th St., Richmond, Va., and by occupation a cutter of gentlemen's underwear.

2d Ques. In whose employment are you now, and how long have you been in their employment?

Ans. I am in the employment of Henry T. Miller and Co., and have been since July 5th, 1878, working for Henry T. Miller, when he was alone and since his partnership.

3rd Ques. Did you cut drawers during that period; if so, how long?

Ans. Yes; all of that time.

4th Ques. Of what make and pattern did you cut?

Ans. I now file a pair, as Exhibit "Q," which is of the same pattern and make as those which I have cut regularly and continuously for Henry T. Miller and Henry T. Miller & Co. since July 5th, 1878.

5th Ques. What do you know about this pair of drawers now filed as Exhibit "Q?"

Ans. I know I cut and made them 29th day of May, 1880, for Mr. C. A. Baldwin; that they did not fit him and were returned.

32 6th Ques. Are these like or different in cutting and reinforcement with those filed with your affidavit heretofore — in this cause?

Answer. They are alike.

7th Ques. During your employment by Henry T. Miller and Henry T. Miller & Co. have you cut or made any other style of drawers than these now filed and those filed with your affidavit?

Ans. The great majority of drawers cut and made have been drawers of this make and pattern. I have made them regularly and continuously of this pattern for over five years. Occasionally, upon a special order or in making up very heavy goods or very cheap stock, I have made them without the reinforcement, but the great majority of those made have been of this particular pattern. I have made no reinforced drawers except upon this pattern.

8th Ques. State what your future employment will be, and where?

Ans. I am about to leave Richmond for North Carolina, where I will remain for a month or two, and after that my plans are uncertain. My term of employment with Henry T. Miller & Co. ends January 1st, 1884.

9th Ques. Who else has been employed by Henry T. Miller and Henry T. Miller & Co. in cutting drawers since July, 1878?

Ans. A man named A. D. Irving, who is now in Louis-

33 ville, Kentucky. He left in 1881. The only other person besides myself is Mr. T. F. Dean, who is there now. Both of these cut under my instructions, and I know their work as well as my own.

10th Ques. You gave an affidavit in this case formerly. Do you wish to alter or modify it?

Ans. I do not. The statements therein are correct, and I here reiterate them as fully as if they were set forth here *verbatim*.

And further this deponent saith not.

J. M. COX.

I hereby certify that the above depositions were duly deposed, sworn to and subscribed to before me according to caption hereof; and I further certify that I am not in any manner of counsel or attorney for either of the parties to this suit.

Given under my hand this 27th day of December, 1883.

GEO. A. HILL,
Notary Public.

Notice Attached to Foregoing Deposition.

To R. H. Anderson:

Take notice that on Thursday, December 20th, 1883, at 10 o'clock a. m., at the office of John S. Wise, Richmond, Virginia, before George A. Hill, notary public, we will take the deposition of Joseph M. Cox and others, to be used as evidence in our behalf in a certain cause pending in the circuit court of the United States at
34 Richmond, Virginia, wherein you are complainant and we are respondents. If from any cause said depositions be not begun thenand there, or being begun be not concluded, the taking of the same will be continued then and there from time to time until concluded.

Richmond, Va., Dec. 7th, 1883.

HENRY T. MILLER & CO.,
By JOHN S. WISE, *Their Counsel.*

Endorsement on foregoing notice.

Executed this the 17th day of Dec., 1883, by delivering to the within-named party, R. H. Anderson, a true copy of this paper.

THOS. E. BALLARD,
Sp. Deputy U. S. Marshal.

The following affidavit is filed as a part of the foregoing deposition:

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

This day personally appeared before me, the undersigned, a notary public, in my city aforesaid, Joseph M. Cox, personally known to me, who, being duly sworn, made oath that he is and for five years continuously hitherto has been cutter for Henry T. Miller and Henry T. Miller & Co. in the manufacture of drawers for gentlemen's wear; that the drawers now filed as Exhibit "A" were
35 cut and manufactured by him or under his supervision; that during the whole period of five years aforesaid he has cut and manufactured for public sale drawers identical in pattern, design, and especially in method of reinforcement, with those now filed, and that for three years prior to the time aforesaid affiant cut drawers of the pattern and design of those now filed, especially in the matter of reinforcing.

J. M. COX.

Subscribed and sworn to before me this first day of August, 1883, in my city aforesaid.

GEORGE A. HILL,
Notary Public.

36 *Depositions Filed on Behalf of the Complainant August 13th, 1884, Referred to in Final Decree.*

The depositions of Charles Sizer and others, taken this 29th day of July, 1884, before W. Cabell Trueman, notary public and special commissioner United States circuit court, pursuant to notice hereto attached, at the office of McGuire and Ellet, 1113 E. Main St., in the city of Richmond, State of Virginia, to be read as evidence on behalf of the plaintiffs in a certain cause now pending in the circuit court of the United States for the eastern district of Virginia, wherein R. H. Anderson is complainant and Henry T. Miller and William Mitchell, partners trading under the firm name of Henry T. Miller & Co., are respondents.

Present: Tazewell Ellett, solicitor for complainant; John S. Wise, solicitor for respondents.

Mr. S. E. Bishop, being duly sworn, deposeth and saith as follows:

By Tazewell Ellett:

1st Question. What is your name, age, occupation, and residence?

Answer. S. E. Bishop; twenty-six years; shirt-cutter; 30 N. 9th St., Richmond, Va.

37 2d Question. How long have you been engaged in the manufacture of gentlemen's underwear?

Answer. Ten years and a half.

3rd Question. State when and where you have been thus employed.

Answer. I was cutter for Wm. P. Tolles & Bros. eight years — Baltimore, Md., and two years and a half with Mr. Anderson.

4th Question. State whether or not they were large manufacturers of drawers and whether you had anything to do with the cutting and handling of them.

Answer. They were at one time the largest in the city of Baltimore. They were at the time that I left them one of the largest. The first three years I cut entirely drawers, and the succeeding five years I had charge of that department.

5th Question. Did you ever in your experience and prior to the time of Anderson's patent see any drawers similar to those marked Exhibit B?

(Excepted to by counsel for respondents as irrelevant.)

Answer. I did not.

6th Question. Did you ever see any similar to the pair of drawers marked Exhibit A?

(Excepted to by counsel for respondents as irrelevant.)

38 Answer. I have never seen any similar up to the time of Mr. Anderson's patent; have never seen any outside of this city.

7th Question. State when and how this style of drawers marked Exhibit A first came to your knowledge.

Answer. It first came to my knowledge after we had been making them some few months. A gentleman friend of mine showed me the two pair at my house the day he purchased them.

8th Question. Do you come in contact with Miller & Co.'s work?

Answer. Since I have been in the employ of Mr. Anderson I have seen both shirts and drawers made by Mr. Miller on customers that have come into our factory.

9th Question. Had you ever seen any of these drawers marked Exhibit A prior to the time of Anderson's patent?

Answer. I never saw anywhere the outside front waistband lapped the seam as in Exhibit A.

10th Question. Did you know of Mr. Anderson's invention prior to the time of the patent?

Answer. I knew of it. We had been experimenting on it nearly a year before it was patented.

39 11th Question. Had any drawers involving the principles of this patent come under your observation during this time would you or not have noticed it?

Answer. I would have noticed it.

12th Question. State whether or not you consider the invention of Mr. Anderson's a novel and useful one.

(Excepted to by counsel for respondents as illegal.)

Answer. I do.

13th Question. Have you read and are you familiar with the patent papers filed as an exhibit with the bill in this case?

Answer. I have read them and am also familiar with them.

14th Question. Look at the drawers marked Exhibit C and state whether or not they are different in the principles involved from those marked Exhibit B; and, if so, state such differences.

(Excepted to by counsel for respondents, as the proper foundation for such a question has not been laid.)

Answer. They are different entirely. Mr. Anderson's patent consists of one solid piece, beginning from the upper part of the front of the drawers, extending to the top of the drawer-, connect-

40 ing with the waistband in the back. Mr. Anderson's drawers is a separate piece—the reinforcement is a separate piece. The Exhibit C is reinforced in the seat and is part of the drawer-body proper; also the Exhibit C reinforcement stops at the seam in the crotch, while Exhibit B covers the crotch seam entirely.

15th Question. Point out the advantages, if any, of either Exhibit B or Exhibit C.

Answer. The advantages of the Exhibit B over the advantages of the Exhibit C is that the Exhibit B is cut with a seam up the center of the back, allowing a chance for all fulness to be cut out, which is absolutely necessary to a fitting drawer-; also the front waistband of Exhibit C is two separate pieces with a seam in front, while Exhibit B is one solid piece without any seam.

16th Question. Compare Exhibit A and Exhibit B; state the points of resemblance, if any there be, between them, and whether or not the principle involved in the style Exhibit B is involved in the style Exhibit A.

Answer. It can be seen that Exhibit B is cut in one piece,
41 while Exhibit A is cut in two pieces, but joined together in front, making one piece same as Exhibit B—lapping the crotch seam as Exhibit B. The only difference between Exhibit A & Exhibit B is that Exhibit A, after crossing the crotch seam, fails to run up to the waistband in the back of the drawer-, as Exhibit B.

17th Question. What principles of Exhibit B are used in the manufacture of Exhibit A?

Answer. The fact of the front waistband being joined in one piece in front and extending over the crotch seam to the rear of the drawer-.

18th Question. Do you consider the fact that the front waistband overlaps in both exhibits the seam in the crotch a material resemblance between the two?

(Excepted to as illegal.)

Answer. This is a material resemblance to this drawer-.

19th Question. One of the principles of Exhibit B being this overlapping of the crotch and Exhibit A involving the same principle, state whether or not, in your opinion, Exhibit A is to that extent an infringement upon Exhibit B.

(Excepted to by counsel for respondents as leading and argumentative.)

42 Answer. It is to that extent an infringement on Exhibit B.

Counsel for complainant, in answer to the various exceptions above, states that, having first established that witness had long and skilled experience in his trade, he was examined as an expert, and his opinion, as well as what he considered concerning the principles involved, frequently asked.

Cross-examination by JOHN S. WISE:

1st Question. Since when have you resided in Richmond?

Answer. I came here in January or February, 1882, and was never here before.

2d Question. Look at Exhibit Q, now shown you (being exhibit filed with deposition of J. M. Cox), and state wherein the cutting and making of Exhibit Q differs from the cutting and making of Exhibit A.

Answer. The difference is the front waistband of Exhibit A extends farther over the crotch seam than Exhibit Q.

3d Question. Is there any differeuce in principle?

Answer. The principle is the same.

4th Question. Have you ever been in the employment of H. T. Miller?

Answer. I never have.

43 5th Question. Do you know what sort of drawers he cut or made July 5th, 1878, or May 29, 1880?

Answer. Don't know anything about them.

And further this deponent saith not.

S. E. BISHOP.

No other witness appearing, the further taking of these depositions is continued until July 30th, 1884, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, 30th day of July, 1884.

By consent of counsel the further taking of these depositions is continued until August 2nd, 1884, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, August 2, 1884.

Present: Tazewell Ellett, solicitor for complainant; John S. Wise, solicitor for respondents.

44 Mr. CHARLES L. SIZER, being duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT:

1st Question. State your name, age, occupation, and residence.

Answer. Chas. L. Sizer; age, 21; occupation, gents' furnishing goods; residence, 411 N. 4th St.

2d Question. By whom were you employed before you accepted your present situation?

Answer. By H. T. Miller & Co. I went to live *him* with him in 1880, about March, and left in February, 1882. I went to work for him again in September, 1882, and left him again in February, 1883.

3d Question. What were your duties when in the employ of H. T. Miller & Co.?

Answer. My duty was to stay in the store. I did something of everything.

4th Question. Did you act as salesman during these periods?

Answer. Yes; I sold most of the goods that were sold over the counter.

5th Question. State whether or not it was your duty to handle and sell drawers.

Answer. Yes, sir.

6th Question. Were you, as salesman, familiar with the different styles of drawers sold by H. T. Miller & C.?

Answer. Yes, sir.

45 7th Question. State whether or not it was your duty, in showing these drawers, to set out the advantages to customers.

Answer. Well, he never told me to do it; there was no big advantage in it.

8th Question. Did you or not as salesman exhibit these drawers to customers and explain such advantages as they possessed, if any?

Excepted to as leading and as not helped by the insertion of the word "or" after exception.

NOTE.—The word or was inserted prior to the statement of the grounds of exception by the counsel for the respondent.

Answer. If I found a customer hard to sell, I did; if not, I didn't.

9th Question. Look at the drawers which I now hand you, marked Exhibit "A," and state whether or not you ever saw or sold any of similar pattern and style while living with H. T. Miller & Co.

Answer. I never seen any while I was living with them, but I saw them after I left there. That is where I first saw them, in H. T. Miller & Co.'s.

10th Question. State whether or not your duties as salesman were such that had this style, Exhibit "A," been in stock you would have noticed it.

Answer. Yes, sir; if it had been there, I would have noticed it.

46 11th Question. How long have you been engaged in the gents' furnishing business?

Answer. About five years.

12th Question. When did you first see the style of drawers marked Exhibit B, which I now hand you?

Answer. February 17, 1883.

13th Question. Did you ever see any drawers of similar style or pattern before that time?

Answer. No, sir.

14th Question. State whether or not you consider the style, Exhibit B, Anderson's patent, a novel and useful one.

(Excepted to, as no foundation has been laid.)

Answer. Yes, sir; I do.

15th Question. What is the chief advantage or use of the style?

(Excepted to, as no foundation has been laid.)

Answer. They fit better; last longer.

16th Question. Explain why they last longer.

Answer. Because they are doubled in the back across the seat and in the front where the seam comes. If that double piece wasn't there they would split or tear down the seam.

17th Question. Look at the style, Exhibit "Q," which I now hand you and state whether or not it is one of a set of drawers sold by H. T. Miller & Co. to C. A. Baldwin during the time that you lived with H. T. Miller & Co.

47 Answer. No, sir; they were jeans drawers, not linen. The ones that I sold him were jean drawers, not linen.

18th Question. Did you know of any linen drawers going from H. T. Miller & Co. to C. A. Baldwin during the time that you lived with them?

Answer. No, sir.

Cross-examination by JOHN S. WISE, counsel for respondents:

1st Question. In whose employment were you before March, 1880?

Answer. Oliver & Robinson, tobacconists.

2d Question. How long had you been there and doing what?

Answer. I was in the smoking tobacco department learning the business. I was there 3 years.

3rd Question. You were 17 years old when you went to live with Miller, were you not?

Answer. About that; yes, sir.

4th Question. Where did you go when you left him?

Answer. Went to A. Saks & Co.

5th Question. How long did you stay there?

Answer. About 5 months.

6th Question. Where did you go then?

Answer. Went to Cape May; stayed there 3 months.

7th Question. What did you do at Cape May?

Answer. Clerk in a cigar store.

8th Question. Where and how were you next employed?

48 Answer. By H. T. Miller.

9th Question. How long?

Answer. About 5 months, until February 15th, 1883.

10th Question. Where next and how long?

Answer. R. H. Anderson & Co.; have been there since that date and am still there.

11th Question. Were you not employed as store boy by Mr. Miller in 1880?

Answer. No, sir.

12th Question. What was your employment?

Answer. Was employed as clerk from the beginning.

13th Question. What pay did you receive?

Answer. Twelve dollars and a half a month. That was when I first went there.

14th Question. Had you had any experience in handling or dealing in gents' furnishing goods before you came to H. T. Miller?

Answer. No, sir.

15th Question. Did you do any measuring for custom orders while there?

Answer. No, sir.

16th Question. Any cutting?

Answer. No, sir.

17th Question. How many orders for drawers were given by C. A. Baldwin to H. T. Miller & Co. while you were in their employ?

Answer. Only one order that I know anything about.

18th Question. When was that?

49 Answer. I don't remember. It is impossible to say. I couldn't say to save my soul.

19th Question. What year was it?

Answer. Not certain about that.

20th Question. Was it before or after you went to Cape May?

Answer. I think it was before.

21st Question. Are you certain?

Answer. No, sir; I am not certain about it.

22d Question. Will you swear that the house filled but one order for him while you were in its employ?

(Excepted to by counsel for complainant, as the witness has already been sworn. What he states is already under oath, and in other respects the same question has been asked.)

Answer. No; I won't swear. I have sworn once, just as Mr. Ellett says.

23rd Question. How many orders did C. A. Baldwin give for drawers while you were in Miller's employ?

Answer. Only one, as I know of.

24th Question. Is it not possible that he may have given other orders of which you had no knowledge?

Answer. He might while I wasn't there.

25th Question. Mr. J. M. Cox was cutter for H. T. Miller, was he not?

Answer. Yes, sir.

26th Question. You were asked in the 17th question-in-chief to look at Exhibit "Q," and stated that the drawers so marked
50 is not a pair made by H. T. Miller & Co. for C. A. Baldwin. Mr. Cox, in his examination, filed that pair of drawers and swears as follows: "I know I cut and made them 29th of May, 1880, for Mr. C. A. Baldwin; that they did not fit him and were returned." In the light of Mr. Cox's answer just quoted, may you not be mistaken en your answer to the 17th question-in-chief or are you still certain that you were right and Mr. Cox was wrong?

Objected to by counsel for complainant.

Answer. As I stated before, that the order was jean drawers and not linen.

27th question. That is not an answer to the question. I repeat the question.

Answer. As I stated before, the only order I know anything about is the order for jean drawers, and I think that's the order Mr. Cox has reference to.

28th question. Please state your birthday.

(Objected to as irrelevant.)

Answer. April 16th, 1863.

29th Question. Then, on May 29th, 1880, you were about 17 years of age and had about 3 months employment in the gents' furnishing business. Did you consider yourself an expert in the business of cutting and making drawers?

(Objected to as argumentative, irrelevant, and based upon
51 an assumption of facts not established by the testimony of the witness.)

Answer. No, sir.

30th Question. Do you so consider yourself now?

Answer. I do.

31st Question. Since when do you date your claim to be an expert?

(Objected to as immaterial and as asking the opinion of the witness upon a point of law which only the court can determine.)

Response to objection.—It is a novel proposition that a witness introduced as an expert and questioned as to his opinion cannot be tested on cross-examination as to the right to his claim as an expert.

Response.—Questions which bring out facts tending to show the witness to be or not to be an expert are admissible, but whether or not the witness is an expert is a question of law for the court to decide.

Answer. I can't answer that question.

32nd Question. Why can't you answer it? If you know you are an expert you know when you got to be one, don't you?

Answer. Yes, sir; I know that.

33rd Question. Then if you know it state it.

Answer. Two or three years back.

34th Question. Where were you when you got to be an expert?

Answer. H. T. Miller & Co.'s; just before I left.

52 35th Question. Did you ever cut a garment or take a measurement for custom goods in your life?

Answer. I never cut a garment, but I have taken upwards of 75 measurements of drawers and shirts both, and made 73 fits, and can be proved by Mess. R. H. Anderson & Co.

36th Question. When and where, and in whose employment were you when you took these measurements?

Answer. From February 17, 1883, to the present date, they were taken at R. H. Anderson & Co.'s branch store, 805 Broad St.

37th Question. When and where and by whom was the style and pattern of drawers shown you — which, in your answer to the 9th question-in-chief, you say you never saw until after you had left Miller's?

Answer. February 17, 1883; by R. H. Anderson, at his factory, 819 Main St.

38th Question Prior to the time of going to live with Anderson did you consider yourself an expert in regard to the cutting and making of drawers and the different styles and patterns thereof?

Answer. No, sir; not in the cutting and making of drawers, but in the styles.

39th Question. When you were with Miller you were a salesman, were you not?

Answer. Yes, sir.

40th Question. Was that your entire business?

53 Answer. No, sir; as I stated before, I did something of everything except cut and make and measurements.

41st Question. State what that was that you did.

Answer. I helped to keep the books, did the collecting, and looked after all goods that went out of the store; also sold goods.

42nd Question. Did you charge goods?

Answer. A good many of them; yes, sir.

43rd Question. Who took the custom measures and orders?

Answer. J. M. Cox and H. T. Miller took the custom measures, and all of them took the orders.

44th Question. When goods made by measurment came in, who examined them?

Answer. I did the most of it.

45th Question. What did you examine them for?

Answer. To see if they were made correct.

46th Question. How did you know whether they were made correctly or not?

Answer. Because H. T. Miller and J. M. Cox had learnt me how they ought to be made.

47th Question. When did they teach you?

Answer. When I first went there, of course.

48th Question. Take drawers, for example. When a custom-made order came in, what did you do to ascertain if they were made correctly?

Answer. See if the reinforcement was on the back, for instance, buttons sewed on well; buttons or strings at bottom, as the order may be.

49th Question. State whether or not custom-made orders
54 were numbered.

Answer. Yes, sir; they were.

50th Question. Look at Exhibit Q, numbered $\frac{36}{32}$ and # 91, and state what they mean.

Answer. Number 91 ought to mean custom order; $\frac{36}{32}$ stock order.

51st Question. Are those numbers put on in the way usual with the house when you were with it?

Answer. Yes, sir; with one exception. Why are their custom number and stock number on the same pair of drawres? They both look alike, from the ink—that they were put on the same day.

52d Question. Does it occur to you as possible that when goods made for a customer and marked with a custom number don't fit and are returned they are then marked with a stock number and put in stock? Is not that a perfectly reasonable objection?

(Objected to as argumentative.)

Answer. Yes, sir; but the jean drawers made for the same gentleman did fit, and as a rule duplicate orders are cut from duplicate measures.

53rd Question. We will discuss the jean drawer business when we get through with this. Look at $\frac{36}{32}$ again and state whether that's the stock mark or a size mark.

Answer. It is a stock mark.

55 54th Question. Is it customary to put a stock mark on in that way, and what does it mean?

Answer. Yes, sir; it means that it is 36 waist, 32 in seam.

55th Question. Then it's a size mark and not a stock mark, ain't it?

Answer. It's both, sir; it's both size and stock mark.

56th Question. Do you know the difference between a size mark and a stock mark? If so, state it.

Answer. Both the same.

The further taking of these depositions is continued until August 4th, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, August 4th, 1884.

Present: Tazewell Ellett, solicitor for complainant; Charles L. Sizer, witness for complainant.

On account of the absence of John S. Wise, solicitor for *for* respondent-, and at the instance of counsel for complainant, these depositions are continued until August 5th, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

56 Office of McGuire & Ellett, in the city of Richmond, August 5, 1884.

Present: Tazewell Ellett, solicitor for complainant.

Mr. CHARLES L. SIZER, who has already been sworn, deposeth and saith as follows:

By TAZEWELL ELLETT, solicitor for complainant:

1st Question. State how many men, including Mr. Miller, were employed in H. T. Miller and H. T. Miller & Co.'s establishment when you went there and during the times you lived with him and the firm.

Answer. When I first went there H. T. Miller, J. M. Cox, and myself were all, but afterwards two more were employed. A. D. Irving, who lived with him six months, and John Christian, who is now with H. T. Miller & Co.; but H. T. Miller & Co., when Irving left, got F. J. Deane.

2d Question. Did Mr. Miller ever travel while you were with him; and, if so, who was salesman in the store and in charge of the same during his absence?

Answer. Yes, sir; I was in charge of the store during his absence.

3rd Question. Did this ever occur shortly after you went to live with H. T. Miller?

Answer. Yes, sir.

57 4th Question. Do you claim to be an expert in measuring and cutting drawers or as salesman and expert in the styles of the same?

Answer. I claim to be in measuring them, but not in cutting them; as salesman also.

5th Question. When Miller and Cox took the measures for drawers who put them down, as a rule?

Answer. I did.

6th Question. Were you often absent from H. T. Miller's while in his employ?

Answer. No, sir; I had no vacation, but spent about one-third of my time in collecting.

7th Question. You state, in answer to the 24th cross-question, in reference to C. A. Baldwin's having given but one order for drawers, that "he might, while I wasn't there," have given other orders. Is it probable that other orders were given by C. A. Baldwin, and that they did not come under your attention during the course of ordering, making, and delivering?

Answer. As a rule, such would not occur, for I saw everything that went out of the store.

8th Question. State whether or not you know positively that H. T. Miller & Co. made other styles of drawers than Exhibit "A?"

Answer. Yes, sir; they did make other styles, as they did not make any of the style Exhibit A while I lived with them.

58 9th Question. State whose duty it was to look after the delivery of all custom-made goods while you were with H. T. Miller and H. T. Miller & Co.

Answer. It was my duty solely while with H. T. Miller; John Christian's duty while with H. T. Miller & Co.

10th Question. In answer to question 56, cross-examination, you say "both the same," having been asked the difference between the size mark and stock mark. Explain what you mean by this.

Answer. The lower figure, or 32, as in this case, signifies the stock mark, the 36 signifies the size, the No. 91 signifies custom make.

11th Question. Look at these drawers, Exhibit "Q," and state whether or not a pair of drawers made May 29th, 1880, would have the appearance of these?

Answer. No, sir; it would be impossible. Goods in stock that length of time would certainly turn yellow, and these look like bran new ones, just made.

And further this deponent saith not.

CHAS. L. SIZER.

59 Mr. R. H. ANDERSON, being first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT, solicitor for complainant:

1st Question. State your name, age, occupation, and residence.

Answer. R. H. Anderson; age, 47; gents' underwear manufacturer; residence, city of Richmond.

2d Question. State where, when, and under what circumstances the invention or improvement in drawers which you have patented (which patent is referred to in the bill) first occurred to you.

Answer. It occurred to me first in Richmond about the fall of 1878. I had had so many complaints, not only from my own trade,

but also Mr. Miller's trade, of the drawers giving way in the crotch and seat that I turned my attention to devise some means whereby it could be prevented. After several attemp-s I hit upon the said invention.

3rd Question. How long a time had you been in the drawers business?

Answer. I have been in the shirt and drawers business since 1876 in this city.

4th Question. State whether or not you, during the time that your invention had occurred to you, before it was patented, exam-
60 ined various styles of drawers which came under your observation, having a regard to your projected improvement.

Answer. I examined everything I could find in the market, both at home and abroad, including Baltimore, Philadelphia, and New York.

5th Question. Did you ever see any of H. T. Miller & Co.'s drawers during this period?

Answer. Yes, sir; frequently.

6th Question. Did any of these various styles which you examined prior to your patent, encluding H. T. Miller and H. T. Miller & Co.'s, have the front facing passing over the seam of the crotch?

Answer. No, sir.

7th Question. Look at the drawers, Exhibit "A," which I now hand you and state when you first saw that style.

Answer. I first saw that style after my attention had been called to the advertisement in the State (which I file herewith, marked Exhibit "X") by Mr. J. M. Cox up at my store about the — day of ——, 18—.

8th Question. Did Mr. Cox speak to you of this advertisement?

Answer. No, sir.

9th Question. How, then, was it brought to your knowledge in your store by Mr. Cox?

Answer. I was in the back portion of the store and overheard Mr. Cox laughingly jeer Sizer about the advertisement at the door.
61 I am under the impression that Mr. Cox was not aware that I was in the store at all.

10th Question. What did you hear Mr. Cox say to Mr. Sizer?

Answer. In substance, he asked Sizer whether he had seen that advertisement about new three-reel drawers. As soon as he saw me he left. That was as near the substance of the conversation as I can remember.

11th Question. Look at Exhibit "A" and Exhibit "B" which I now hand you and state whether or not Exhibit "A" necessarily involves in the making one of the principles covered by the patented drawers, Exhibit "B."

Answer. Yes, sir; I consider that it infringes that part of the invention marked "B 3" and "B 2" by covering the crotch seam.

12th Question. Does the patented drawer-, Exhibit "B," involve other and new principles and combinations of principles not infringed or covered by Exhibit A?

Answer. Yes, sir.

13th Question. State what these principles are.

Answer. I refer to the patent filed in this case, more especially figures 1 and 5; also to what is said under numbers 2 and 3 in the statement of the claim.

14th Question. State what relations exist between H. T. Miller & Co. and yourself.

Answer. H. T. Miller and myself are not on good terms;
62 Mr. Mitchell, the company, and myself are on friendly terms.

15th Question. What relations exist between the witness, J. M. Cox, and yourself?

Answer. They are very bad. He is the sole cause of the unpleasantness between Miller and myself.

16th Question. State how these unkind feelings arose.

Answer. About the fall of '80 Mr. Cox was cutting for me after he quit work at Mr. Miller's. My attention being called during that time to a letter written to one of my hands asking her to come and work for him at Mr. Miller's, I felt very much outraged at the double-dealing of J. M. Cox, and so told him of it at the time, which made him an everlasting enemy of mine. When leaving me he vowed vengeance if he lived long enough.

The further taking of these depositions is continued until August 6th at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, August 6, 1884.

Present: Tazewell Ellett, solicitor for complainant.

63 R. H. Anderson, who has already been sworn, deposeth and saith as follows:

By Tazewell Ellett:

1st Question. State whether or not F. J. Deane, whose affidavit is made a part of the answer, was ever a "cutter of drawers for gentlemen's wear" while employed by you.

Answer. No, sir; he didn't know how many pieces went into a pair of drawers and was not a drawer- cutter. He never attempted to cut but two pair for P. H. Starke, Sr., who could not get into them at all.

2d Question. How long did he live with you?

Answer. As near as I can remember, his own affidavit is about correct.

3rd Question. Was he sufficiently familiar with the drawers business to occupy any place in the drawers department while living with you?

Answer. No, sir. He was totally incompetent as a drawer- cutter or measurer or salesman, or anything pertaining to drawers, and never professed otherwise while in my employ.

4th Question. Did he profess that he was incompetent?

Answer. Yes, sir; he never professed otherwise.

5th Question. For what purpose was he employed by you?

Answer. As a shirt-cutter only.

6th Question. Why did Deane leave you?

64 Answer. On account of my forbidding him spending his evenings in H. T. Miller's.

7th Question. Did he ever make application to you to return?

Answer. Yes, sir. I file herewith a letter marked Exhibit "F. J. D.," in which he made this application to me.

8th Question. Did you employ him or not?

Answer. I did on the strength of that letter.

9th Question. How long did he remain with you the second time?

Answer. One week.

10th Question. Why did he leave you the second time?

Answer. I never knew. I did not know he had left until I heard he was working at Henry Miller's.

And further this deponent saith not.

R. HUNTER ANDERSON.

No other witness appearing, the further taking of these depositions is continued until August 7th, 1884, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, August 7, 1884.

Present: Tazewell Ellett, solicitor for complainant.

65 J. L. D. LAWRENCE, being first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT:

1st Question. What is your name, age, occupation, and residence?

Answer. J. L. D. Lawrence; age, 51; occupation, book-binder; residence, Henrico county.

2d Question. State whether or not you ever purchased any drawers from H. T. Miller & Co.

Answer. I did.

3rd Question. State when and under what circumstances you purchased them.

Answer. Some time in the early part of June, 1883, I went into the store of H. T. Miller & Co.'s, corner of Ninth and Main, and I asked to see some drawers. They then showed me some in stock ready made. I examined those critically and then I asked them if they didn't have something different from that—stronger in the crotch. They then showed me another pair of different style, and I ordered two pair, one of which pair I herewith file as part of my answer, marked Exhibit "J. L. D. L," the two pair ordered having been delivered to me in about one week after they were ordered.

4th Question. Why did you call for the drawers strengthened in the crotch?

66 Answer. On account of an advertisement of theirs in which they specified and warranted that they would not split in the crotch.

5th Question. What did they charge you for these drawers?

Answer. Seventy-five cents a pair.

6th Question. Were these represented to you as the best jean drawers that were made?

Answer. They were.

7th Question. Do you know what Anderson's best jean drawers were selling at?

Answer. I had learned previous to that time that Anderson was selling the same quality of drawers as that for $1.00.

8th Question. Look at the affidavit which I now hand you and state whether the statements therein made are correct or not.

Answer. They are; and I file the same herewith, marked affidavit "J. L. D. L.," and wish the same to be taken as a part of my deposition as if the same was herewith repeated word for word.

And further this deponent saith not.

J. L. D. LAWRENCE.

Mr. CHAS. A. BALDWIN, having been duly sworn, deposes and says as follows:

By Mr. ELLETT:

67 1st Quest. Please state your age, name, & occupation.

Ans. Am fifty-eight years old; Chas. A. Baldwin, & am a merchant.

2nd Quest. by same. State whether or not you ever purchased any drawers from H. T. Miller or H. T. Miller & Co. & the circumstances under which they were purchased.

Ans. I only remember buying some cotton jeans drawers. I went in there to buy some linen drawers, & Mr. Miller advised me to buy the jeans drawers, which I did. I don't remember buying any other drawers from them.

And further this deponent saith not.

C. A. BALDWIN.

No other witness appearing, the further taking of these depositions is continued until August 8, 1884, at the same place and between the same hours.

W. CABELL TRUEMAN, *N. P.*

Office of McGuire & Ellett, in the city of Richmond, August 8, 1884.

Present: Tazewell Ellett, solicitor for complainant.

68 HEMAN BALDWIN, having been first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT:

1st Question. What is your name, age, occupation, and residence?

Answer. Heman Baldwin; age 31; decorative painter; residence, American Hotel, Richmond, Va.

2d Question. Did you ever buy any drawers of H. T. Miller & Co.? If so, state when and under what circumstances the purchase was made.

Answer. Yes, sir; I bought drawers from him during the month of March, 1883. I asked him for the drawers that wouldn't split in the seat, such as I saw advertised in the State. The young man told me he had them, and produced them from under the counter. He told me he had two kinds. The best was 75c. and the other was 65c.; one was bleached and the other was unbleached. I decided to take the 75-cent pair, a pair of which, marked Exhibit "X," I file herewith as a part of my answer.

3d Question. Look at the affidavit which I now hand you, marked "H. B.," and say whether the statements therein are true and correct.

Answer. Yes, sir; they are correct, and I file the affidavit herewith as a part of my deposition as though it were here repeated word for word.

69 And further this deponent saith not.

HEMAN BALDWIN.

STATE OF VIRGINIA, *City of Richmond,* } *ss:*

I, W. Cabell Trueman, a notary public for the city aforesaid, in the said State, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me at the times and place mentioned therein.

Given under my hand this 13th day of August, 1884.

W. CABELL TRUEMAN, *N. P.*

Fee, $39.00.

The following is Exhibit "X," referred to in the deposition of Mr. R. H. Anderson:

EXHIBIT "X."

Miller's Acme drawers are duplex, elliptic, double-back-action, double constructed in the weaving, with three threads in the reel, and are warranted not to split in the seat.

70 The duplex, elliptic, double-back-action drawers are manufactured at the corner of Ninth and Main streets by H. S. Miller & Co.

The following is Exhibit F. J. D., referred to in the deposition of Mr. R. H. Anderson:

EXHIBIT F. J. D.

ATLANTA, GA., *Sept. 30th*, 1881.

Mr. Anderson.

DEAR SIR: Your favor of 28th received. I will come back and agree to stay away from Miller's. Everybody says I was wrong, and I see it in that light myself. At that time I could not see the force of any reasoning on your part, for the simple reason I was influenced; would like to hear from you as soon as possible. I went to work at the Exposition grounds yesterday, but, on receipt of your letter, I have already given notice that I will quit very soon. By hard work I secured control of Wanamaker's exhibit; also one from Selma, Ala., and one from Atlanta, Ga. They would pay me good, but it is only a temporary affair; besides, I want to get back to a place that I like and something steady. I could have secured an agency for a folding
71 bed. It is a Chicago get-up, and they say it is the finest thing in folding beds ever got out. I would like to go to Phila. first to settle a little business. I left without getting all my bills in, and I want to see if I cannot get some of my money back; will go by way of Savannah, it being the cheapest way; can also take orders in Savannah if you send me samples to the Savannah address, 133½ Congress St.

Respectfully yours,

FRED. J. DEAN,
Southern Hotel, Atlanta, Ga.

The following is Exhibit J. L. D. L., referred to in the deposition of J. L. D. Lawrence:

EXHIBIT J. L. D. L.

STATE OF VIRGINIA, *City of Richmond,* } *ss:*

This day personally appeared before Tazewell Ellett, a notary public in and for the city aforesaid, in said State, Jos. L. D. Lawrence, and, after being duly sworn, made oath that on or about the — day of June, 1883, he went into the store of H. T. Miller & Co., at
72 the corner of Ninth and Main streets, Richmond, Virginia, and ordered some of their best drawers, stating at the time, I want your reinforced drawers; they will not be ripping open in the crotch or seat. They replied that they could make me some which they were satisfied would not rip. They then took my order and I called again in a few days, when they handed me drawers, one pair of which I file herewith, marked, "J. L. D. L., 789." They charged me seventy-five cents per pair for said drawers, whereas I had previously learned that Anderson sold them for one dollar. They showed me stock of the same style and make of drawers, but I preferred to have mine made to order.

J. L. D. LAWRENCE.

Subscribed and sworn to before me this 3rd day of August, 1883.

TAZEWELL ELLETT.

The following is Exhibit H. B., referred to in the deposition of Heman Baldwin:

73 EXHIBIT H. B.

STATE OF VIRGINIA, *City of Richmond,* } ss:

Heman Baldwin, being first duly sworn, made oath as follows: During the month of March, 1883, I went to the store of H. T. Miller & Co., at the corner of Ninth & Main streets, Richmond, Virginia, and asked for some of his Acme drawers, elliptic, double-back-action, that would not split in the crotch, and such as he advertised in the State in an advertisement, a copy of which is herewith filed as an exhibit, marked X. The young man in the store immediately took from under the counter a box of drawers and showed them to me, saying that they were the drawers advertised, and that they would guarantee that they would not split in the crotch, and offered them to me at seventy-five cents, stating that these were their best quality, and that they had some that they would sell at sixty-five cents. I replied that I wanted the best he had, & took a pair of those shown me, and which I now file herewith, marked "Miller's Acme," paid for them, and left the store.

H. BALDWIN.

The within affidavit sworn to and subscribed before me this 3 day of August, 1883.

TAZEWELL ELLETT,
Notary Public for Richmond City, Virginia.

74 *Notice.*

To H. T. Miller & Co.:

Take notice that on Tuesday, July 29th, 1884, at 11 o'clock a. m., at the office of McGuire & Ellett, 1113 E. Main street, Richmond, Virginia, before W. Cabell Trueman, notary public and special commissioner United States court, we will take the depositions of Charles Sizer, of Richmond, Virginia, and S. E. Bishop, of same place, and others, to be used as evidence in our behalf in a certain cause pending in the circuit court of the United States, at Richmond, Virginia, wherein you are defendants and I am complainant. If from any cause said depositions be not begun then and there, or being begun be not concluded, the taking of the same will be continued from time to time and at the same place until the same are completed.

Very truly yours,

R. H. ANDERSON,
By McGUIRE & ELLETT,
His Counsel.

Richmond, Virginia, July 25th, 1884.

75 *Depositions on Behalf of Defendants. Filed August* 28, 1884. *Referred to in Final Decree.*

The depositions of John R. Christian and others, taken before George A. Hill, a notary public in and for the city of Richmond, State of Virginia, this twenty-sixth day of August, in the year of our Lord eighteen hundred and eighty-four, to be used as evidence in a certain suit pending in the circuit court of the United States for the eastern district of Virginia, whereof R. H. Anderson is plaintiff and Henry T. Miller & Co. are defendants.

Present: John S. Wise, counsel for defendant-, and F. H. McGuire, for plaintiff.

The principal counsel for plaintiff being absent, the taking of these depositions was continued until Wednesday, August 27th, 1884, at ten o'clock.

GEO. A. HILL,
Notary Public.

Pursuant to adjournment the further taking of these depositions is resumed this twenty-seventh day of August, 1884.

Present: John S. Wise, counsel for defendant-, & Tazewell Ellett, counsel for plaintiff.

76 JOHN R. CHRISTIAN, being duly sworn, deposed and said as follows:

1st Ques. State your name, age, residence, and occupation.

Ans. Name, John R. Christian; age, eighteen years; 300 N. 9th St., Richmond, Va.; salesman by occupation, with H. T. Miller & Co., & have been with them since Nov. 10th, 1881.

2 Ques. Look at the drawers now shown you, marked Exhibit "Q" with deposition of J. M. Cox, and state what you know about them.

Ans. I know that they are made by Messrs. H. T. Miller & Co. The order was taken May 29th, 1880, for C. A. Baldwin.

3d Ques. State whether drawers like Exhibit Q have been made by Henry T. Miller & H. T. Miller & Co. since you have lived with them; and, if so, how long?

Ans. Ever since I have been there.

4th Ques. Do you know Charles L. Sizer?

Ans. I do, sir.

5th Ques. Do you know his handwriting?

Ans. I do, sir.

6th Ques. Look at the Index Book now shown you, on the third page thereof, & state who wrote C. A. Baldwin, "# 91," if you know.

Ans. C. L. Sizer wrote that.

77 (The Index Book is here filed.)

7th Ques. I call your attention particularly to the front piece on these drawers marked Exhibit Q which overlap- the seam. State

whether H. T. Miller and H. T. Miller & Co. have or have not been making drawers with that feature of construction ever since you have lived with them.

Ans. They have.

8th Ques. State whether you know how long this particular pair of drawers has been in stock.

Ans. About six months ago I put them in a box for stock. I knew where they were before that, but that was the first time that they came to my notice.

Cross-examined by TAZEWELL ELLETT, of counsel for plaintiff:

1st Ques. What were your duties when first employed by H. T. Miller & Co.?

Ans. Errand boy.

2d Ques. How long were you thus employed?

Ans. About six months; since that have been employed as salesman.

3 Ques. Did you act as salesman during the time that Sizer lived with H. T. Miller & Co.?

Ans. No, sir.

78 4th Ques. Have all the drawers made by H. T. Miller & Co. since you went to live with them — similar in make to Exhibit Q?

Ans. I cannot say.

5th Ques. When was your attention first called to the make of Exhibit Q?

Ans. About six months ago.

6th Ques. You had not then observed before that whether all the drawers made by H. T. Miller & Co. were like Exhibit Q or not?

Ans. No, sir.

7th Ques. Did you ever cut or measure drawers?

Ans. I have measured, but not cut.

8th Ques. Is there a difference between the measurement of drawers like Exhibit Q and other drawers?

Ans. None that I know of.

9th Ques. Were the drawers made for C. A. Baldwin linen or cotton?

Answer. Linen.

10th Ques. As you went to live with H. T. Miller & Co. after May 29th, 1880, how do you know that drawers were then made by H. T. Miller for C. A. Baldwin?

Ans. Because the drawers were numbered, and that is the number of Mr. Baldwin. All drawers are numbered. I also have Mr. Baldwin's word for it, & they also compare with Mr. Baldwin's measure.

79 11th Ques. Did you know anything of Mr. Baldwin's measure having been taken May 29, 1880, before your attention was called to them within the last six months?

Ans. No, sir.

12th Ques. Had you ever before that noticed the difference between drawers Exhibit Q and any other drawers manufactured by Henry T. Miller & Co.?

Ans. No, sir.

13th Ques. Look at the index which you filed and explain what "C. A. Baldwin, No. 91," means.

Ans. It means that #91 is the No. of Mr. C. A. Baldwin's drawers ordered.

14th Ques. Did any one ever call at H. T. Miller & Co.'s and ask to be shown their new drawers by you; if so, who was it, when, and under what circumstances?

Ans. No, sir; we did not have any new drawers.

15th Ques. Did not Charles L. Sizer call at H. T. Miller & Co.'s and ask to be shown some of the drawers advertised in the "State" by H. T. Miller & Co.?

Ans. He did, and I told him they were the same drawers which we had always been making, and that Mr. Miller put this ad-
80 vertisement into rhyme and put it in the "State," and it attracted his attention. I don't remember the day. I showed him no drawers.

16th Ques. Did H. T. Miller & Co. have any drawers that corresponded with the advertisement?

Ans. I don't know how you could get a pair of drawers that were duplex, elliptic, double-back-action, three threads in the reel, and warranted not to split in the seat.

17th Ques. Why, then, was such an advertisement put in the papers?

Ans. An idea of Mr. Miller's.

18th Ques. As you say in answer to cross-question sixth that you had not before six months observed whether all the drawers made by H. T. Miller & Co. were like Exhibit Q or not, did you or not before then know of such a difference?

Ans. I never noticed.

And further this deponent saith not.

JNO. R. CHRISTIAN.

Mrs. JANE E. GIBBS, another witness, being duly sworn for the defence, testifies:

By JOHN S. WISE, for defence:

1st Question. What is your name, age, residence, & occu-
81 pation?

Ans. Name, Jane E. Gibbs; age, 60 years; residence, Richmond; occupation, seamstress.

2nd Question by same. How long have you been making drawers for Henry T. Miller & H. T. Miller & Co.?

Answer. I have been making drawers, off & on, for eight or ten years. I worked in general, but made drawers generally.

3rd Question by same. Look at the book marked Mrs. J. E. Gibbs, now filed & shown to you, & state what it is.

Ans. It is the pass book between Mr. Miller and myself by which I worked.

4th Question by same. Look at the page of entries headed "May 30th" and state whether the entries therein are as they were when you did the work.

Ans. I cannot see but that it is the same when I did the work.

5th Question. Look at these drawers marked Exhibit "Q," #91, and state whether you made them.

Ans. I cannot say positively that I made those drawers, though I made linen drawers for Mr. Miller just this pattern, but I
82 would not be willing to say, from the length of time, that these are the ones.

6th Ques. Why can't you identify this particular pair as made by you?

Ans. Only because they have been made so long that, of course, I could not identify my work.

7th Ques. Look at the facing of these drawers, Exhibit "Q," & particularly the piece extending over the seam of the crotch, and state when you first saw drawers made that way & whether you ever made any like them for H. T. Miller or H. T. Miller & Co.; and, if so, when you first made such and how long you have been making such.

Ans. I never saw them until I made them for Mr. Miller. I could not give you the date, but it was the first or second year that I went to work for him. I would not be positive.

8th Ques. Did you make drawers like Exhibit "Q" as early as eighteen hundred and eighty?

Ans. Why, certainly I did, and must have made them before that.

9th Ques. I want you to state, as near as you can, how many years ago you first made drawers like these, Exhibit "Q," for
83 Mr. Miller. I don't wish you to be exact, but to state the number of years numerically.

Ans. I will say this, that I must have made them at least three years.

10th Ques. Are you now working with Mr. Miller?

Ans. No, sir; I am not.

11th Ques. How long has it been since you worked for him?

Ans. It must have been a year and a half.

X ex'd by Mr. ELLETT:

1 X Ques. Did you ever make any other style of drawers for Mr. Miller?

Ans. Yes, sir. I made some closed at the seat, but I did not make a great many. I mean by that that the piece did not lap, but we did not make but very few of them; when we done that we always put the stay on them.

2nd X Ques. Did you ever make any other style after making the first like Exhibit "Q?"

Ans. No, sir.

3rd X Ques. Did you make the drawers of this style because it was your idea, or that of Mr. Miller?

Ans. That of Mr. Miller.

84 4th X Ques. Did Mr. Miller positively instruct you to make them of this style?

Ans. He did.

5th X Ques. I repeat two X Ques., & I desire to know whether you are positive that you never made any other style than Exhibit "Q" after the first pair like that you made.

Ans. I am certain I did not.

6th X Ques. Did you ever make any of this style before Mr. Cox went to live with Mr. Miller, in 1878?

Ans. I do not know. I do not know exactly the date Mr. Cox went to Mr. Miller's.

7th X Ques. Presuming that Mr. Cox went to Mr. Miller's in 1878, did you ever make any of the style Exhibit "Q" before that time?

Ans. My memory don't last me that long ago, as I have just told you awhile ago, unless I had it down.

8th X Ques. Did you ever make drawers of other styles for Miller?

Ans. I told you that I made a very few when I first commenced working for him, but none since.

9th X Ques. Is there any way that you can arrive at the exact date when you commenced to make drawers like Exhibit "Q?"

85 Ans. No, sir.

10th X Ques. Why, then, are you so positive that you commenced to make them at least three years ago?

Ans. I am not any more positive than this, that I made them for Mr. Miller, & I know it was not last year or the year before.

11th X Ques. When, as well as you can recollect, did you first begin making drawers like Exhibit "Q?"

Ans. I could not say. I did not keep the date nor the year.

12th X Ques. Have you no recollection of it whatever?

Answer. Not to the day nor date.

13th X Ques. I do not wish the exact day & date, but about what time did you commence making them?

Ans. Could not say.

14th X Ques. You, then, have no recollection whatever of the time?

Answer. No, sir. I have said all I know about it. I have no recollection of day & date. I kept no register. You've got the book, & that is all that I can say.

Re-examined by Mr. WISE:

86 1st Ques. Were the drawers which appear as made by you on your pass book under date of May 30 made like these now shown you, Exhibit "Q," or not? Do you know?

Ans. They were made of that pattern.

Re-X examined by Mr. ELLETT:

1st Ques. How do you know they were of this pattern?

A. From not making any others.

Further deponent sayeth not.

JANE E. GIBBS.

Miss JULIA WADE, being sworn for the defence, testifies:

By Mr. WISE:

1st Ques. What is your name, age, residence, & occupation?

Answer. Julia Wade; age, 23; reside in Richmond; occupation, shirt and drawers maker.

2nd Ques. Have you ever made drawers for H. T. Miller or H. T. Miller & Co.? If so, since when?

Ans. Yes; since 1880.

3rd Ques. Look at the book now shown you. What is it?

Book now filed, Julia Wade, No. 7.

Answer. It is my pass book. I went to work for him latter part of December, 1880, & worked for him for four years.

4th Ques. It has not been four years since December, 1880. How do you make it you have worked four years?

87 Ans. I said nearly four years; I did not say four years.

5th Ques. Look at the drawers now shown you, Exhibit Q, and tell me if you ever saw any like them; and, if so, where?

Ans. I never saw any until I went to Mr. Miller's. I worked in a shirt factory before then, but saw none. This was the only factory I saw them in.

6th —. Did you ever make any like Exhibit Q for Mr. Miller?

Ans. Yes, sir.

7th Ques. When did you first make drawers like these for Mr. Miller?

Ans. About a month after I went there. I went on shirts first.

8th Ques. Are you certain that the drawers you made about a month after you went there had the facing and piece extending over the seam of the crotch like this pair?

Objected to by counsel for plaintiff as illegal and leading.

Ans. Yes, sir; every one. They were made & laying on a table when I got there, and have been made ever since.

9th Ques. State whether or not you have been making them like Exhibit Q ever since you have been in Mr. Miller's employment.

88 Ans. I have ever since.

Cross-examined by counsel for plaintiff:

1st. Ques. What time in 1880 did you go to live with Henry T. Miller?

Ans. In December.

2 Ques. Are you certain of this?

Ans. Yes, sir; if I was not I would not have said it.

3d Ques. Did you not live with R. H. Anderson just before going there?

Ans. I did. I don't know when I went to Anderson's; and loafed two weeks before I went to Mr. Miller's.

4th Ques. At what time did you leave Mr. Anderson?

Ans. I must have left about the first of December, 1880.

5th Ques. When you worked for Mr. Anderson did you work in his factory?

Ans. Yes, sir.

6th Ques. When you went to work for Mr. Miller did you work at home or in his factory?

Ans. In his factory.

7th Ques. Where was Mr. Anderson's factory situated when you left him?

Ans. I don't know now, he having moved so many times.

8th Ques. How long did you work for Mr. Anderson?

89 Ans. Nine months continuously.

9th Ques. Where was Miller's factory situated when you went to work for him?

Ans. Over Ramos & Moses, in fourth story.

10th Ques. Did you not live with Anderson until August 20th, 1881?

Ans. No, sir; I don't think I did.

11th Ques. Did you ever work for Miller while living with Anderson?

Ans. No, sir.

12th X Ques. Did you ever work for Anderson while living with Miller?

Ans. No, sir.

13th X Ques. You are certain you did not live with Anderson during the year 1881?

Ans. No, sir; I am certain.

14th X Ques. What is the date of your first pass book with H. T. Miller?

Ans. That is something I can't say; I guess he knows more about it than I do.

15th X Ques. Did he give you a pass book when you first went there?

Ans. Yes, sir.

16th X Ques. How many pass books have you had since you have been there?

Ans. I could not give account.

17th X Ques. Look at the pass book alluded to, marked Julia

90 Wade, No. 7, beginning with page 1, down to the bottom of pages 6. You will find on pages 1, 2, & 3 the dates are December 10th, no year; Dec. 17, no year; Dec. 24th, no year; January 1st, no year; Jan'y 13th, 1881; Jan'y 21st, no year; & then on pages 4 & 5 and succeeding pages it is January 29th, '82; February 4th, '82; Feb'y 11, 1882; Feb'y 18, 1882, & so on. Explain why on page 3 the year 1881 is used, and on subsequent pages, beginning with Jan'y 29th, on 4th page, 1882 (the year of) is used.

Ans. Well, I can't answer the question; I leave it to Mr. Miller; I can't recollect; I reckon he can; I can't keep anything in my mind.

(It is hereby agreed between parties that the entry of 1881, in January, is probably a mistake, and that the old year was used through inadvertence, the book being, in fact, for 1882.)

18th Ques. Said pass book being for 1882, are you still confident that you went to work for Mr. Miller in December, 1880? Was it not, rather, December, 1881?

Ans. No, sir; it was not; it was 1880.

19th Ques. You are certain that you never saw any of these
91 drawers before you went to Mr. Miller's?

Ans. I am. I never saw any, and I made the first pair of drawers about a month after I went there.

20th Ques. State whether or not you are so positive that you went to live with Mr. Miller in 1880 that if I show you from the pay-, rolls of Anderson that he paid you your salary up to August 20th 1881, you would assert that you went to Miller in December, 1880?

Ans. I will. I don't want to see his programme.

And further this deponent saith not.

MISS JULIA WADE.

HENRY T. MILLER, the defendant, being sworn, deposeth and saith as follows:

1st Ques. When did you first make drawers like Exhibit Q, and from whom did you get the idea, & have you been making them regularly ever since?

Ans. A short time after Mr. Cox came to live with me, in 1878 or 1879, I don't remember which, several parties, particularly fleshy men, complained of their drawers splitting adown the seam in the crotch. Mr. Cox, my cutter, said he could obviate this by ex-
92 tending the front facing across the crotch seam. He cut nearly all of the drawers about that time for fat men to obviate this splitting down the crotch seam. We have been making them regularly ever since of the pattern like Exhibit Q, for now about four years, principally for special orders. Sometimes in making stock the girls making them would fail to extend the front facing across the crotch seam.

2d Ques. State what evidence you have that Exhibit Q was made for Charles Baldwin.

Ans. My recollection is Mr. Baldwin called & left his order for drawers May 29th, 1880. I now file drawers order book, marked "drawers orders," and Mr. Baldwin's order is numbered 91, & is for three pair of linen drawers, with details as mentioned on the order. I also file book marked "Index, H. T. Miller, August, 1874," which was originally a shirt index, subsequently turned into drawers index. From Mrs. Gibb's pass book of date May 30th, 1880, she made that week quite a lot of drawers for special orders. I
93 see that she made order No. 91, and, on reference to my drawers order book, I find they were made for C. A. Baldwin. She was paid for making them on June 5, 1880. I also file book—what we term our charge book—marked Exhibit "M." All goods brought in by the operators, examined, and were charged in

this book, Exhibit " M," & I find on page 47 that C. A. Baldwin is charged with three pair of linen drawers, at $3.00 per pair. The drawers were returned by Mr. Baldwin and scratched out against him, not carried to the regular day book. He complained, as well as I remember, that they did not fit him. From reference to my order books we never made Mr. C. A. Baldwin any other than the three pair- of linen drawers ordered by him May 29, 1880, & returned.

3d Ques. State whether Exhibit Q was one of that identical three pair- of drawers and where are the other two pair-?

Ans. It is one of the identical pair-. The other two pair- were in my stock at the time this pair was filed, and I think they are there now.

4th Ques. You have heard & seen the testimony of Mr.
94 Sizer, in which he states that you made no drawers of this character while he was with you, and also insinuates that this pair of drawers has been substituted for those made for Mr. Baldwin. State what you have to say in reply to that testimony.

Ans. I heard the testimony of Mr. Sizer, and was astonished at his evidence. I am satisfied that he never while with me ever examined the crotch of a pair of drawers. His duty was, when the drawers came in from work, to see that they were ordered for buttons or strings at ankle, reinforced or plain in seat. The order for the front facing was an order to the cutters alone, and so understood. The Exhibit Q is one of the identical pairs made for Mr. Baldwin.

Cross-examined:

1 X Ques. How do you know that Exhibit Q are the identical pair of drawers made for C. A. Baldwin?

Ans. Because they are numbered 91. That is the number of Mr. Baldwin's order for three pair- of linen drawers. At that time we numbered all orders, shirts & drawers, with pen & ink. They
95 were first sent down from the factory by the cutter marked in pencil. When I moved to cor. of 9th & Main St. & Mr. Mitchell became a partner we took stock. These drawers were then numbered with pen & ink, according to the order book, by Charles L. Sizer, & put in stock.

2d Ques. When you say sent down by the cutter, what do you mean?

Ans. I mean that they were sent in by the cutter or operatives to be delivered and charged.

3d Ques. Do you know that that was done with this pair of drawers in particular or with your stock generally?

Ans. It was done only with special orders that were misfits & not sold, but left on hand. The stock drawers are not numbered in rotation as the special orders are.

4th Ques. Do you know all that you have said above of this particular pair of drawers of your own personal knowledge or do you glean it from the customs of your house in reference to orders in general?

Ans. From my system of doing business I know that the
96 drawers alluded to were made for Mr. Baldwin.

And further this deponent saith not.

H. T. MILLER.

I, George A. Hill, do certify that the foregoing depositions were taken before me; that each witness was sworn and subscribed to their respective evidence, and that the said evidence was taken at the time and place mentioned in the notice herewith accompanying.

GEO. A. HILL,
Notary Public.

Notice Attached to Foregoing Depositions.

To R. H. Anderson:

Take notice that on Tuesday, August 26th 1884, at 10 o'clock a. m., at the office of John S. Wise, No. 5 U. S. custom-house, Richmond, Virginia, before George A. Hill, notary public, we will take the depositions of John R. Christian, Henry T. Miller, Mrs. Jane E. Gibbs, Miss Julia Wade, and others, to be used as evidence
97 in our behalf in a certain cause pending in the circuit court of the United States for the eastern district of Virginia, at Richmond, Virginia, wherein you are plaintiff and we are defendants.

If from any cause said depositions be not begun then and there, or, being begun, be not completed, the taking of the same will be continued from time to time and at the same place until the same are completed.

Please protect your interest in this matter.

Respectfully, HENRY T. MILLER & CO.,
By JNO. S. WISE, *Attorney.*

Richmond, Virginia, August 18th, 1884.

Endorsed: Service accepted. Richmond, Virginia, August 18th, 1884. McGuire & Ellett, counsel for R. H. Anderson.

98 *Depositions on Behalf of Complainant, Filed October 1st, 1884, Referred to in Final Decree.*

The depositions of Mrs. D. Ellett and others, taken before me, H. Cabell Trueman, notary public and special commissioner United States circuit court for the eastern district of Virginia, pursuant to notice hereto attached, at the office of McGuire & Ellett, in the city of Richmond, on the 27th day of September, 1884, between the hours of 6 a. m. and 6 p. m., to be read as evidence on behalf of R. H. Anderson in a certain cause pending in the circuit court of the United States for the eastern district of Virginia, at Richmond, Virginia, wherein R. H. Anderson is complainant and Henry T. Miller & Co. are respondents.

Present: Tazewell Ellett, counsel for complainant.

Mrs. D. ELLETT, a witness of lawful age, being first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT, counsel for complainant:

99 1st Question. State you name, age, occupation, and residence.

Answer. My name is Mrs. D. Ellett: age, above twenty-one years; householder; residence, 118 N. 20th St.

2nd Question. Did you ever do any sewing for H. T. Miller and H. T. Miller & Co.; if so, when?

Answer. No, sir; I didn't make the drawers. I finished off some drawers that my daughter made; sewed for him between 1879 and 1883.

3rd Question. Did you finish off other drawers than those your daughter made?

Answer. Yes; plenty of them; as many as 12 pairs a day sometimes.

4th Question. On an average, how many would you finish off in a month?

Answer. I couldn't tell exactly, for some days I finished off shirts.

5th Question. During this interval how many persons did you finish off drawers for?

Answer. I can't tell. I finished off for different machines and for his workmen in general.

6th Question. Do you consider yourself an expert in reference to the different styles of drawers made by Richmond manufacturers since 1879?

100 Answer. I think I am a very good judge; I have finished them for H. T. Miller and others.

7th Question. Look at the drawers which I now hand you, marked Exhibit "Q," and state whether or not that is the style of drawers you finished off for H. T. Miller.

Answer. No, sir.

8th Question. State the difference in the style of Exhibit "Q" and the drawers that you finished off while with H. T. Miller.

Answer. The reinforcement just came down to the seam and was stitched across in the drawers I finished. In these drawers, Exhibit "Q," it overlaps the seam.

9th Question. How many pairs of drawers do you think you finished for H. T. Miller while finishing for him?

Answer. I reckon it would average 25 pairs a week.

10th Question. State what you mean by finishing off.

Answer. Working the button-holes, sewing on buttons, and hemming tapes in the crotch and at the back.

101 11th Question. While hemming this tape in the crotch did you ever finish any of the style of Exhibit "Q?"

Answer. I don't remember whether I ever did or not.

12th Question. Did you ever notice any of this style of drawers, Exhibit "Q," during that time?

Answer. No, sir; I did not.

And further this deponent saith not.

M. A. ELLETT.

Mrs. L. V. ALLEN, being first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT, counsel for complainant:

1st Question. State your name, age, occupation, and residence.

—. My name is Mrs. L. V. Allen; age, above twenty-one; I have no occupation, and I live with my mother at 118 N. 20th street.

2nd Question. Did you ever make any drawers for H. T. Miller and H. T. Miller & Co.?

Answer. Yes, sir; I did, between 1881 and 1883.

3rd Question. Did you make them continuously for them during that time?

Answer. Yes, sir.

102 4th Question. Look at the drawers which I now hand you, marked Exhibit "Q," and state whether that is the style of drawers made by you for H. T. Miller and H. T. Miller & Co.

Answer. No, sir.

5th Question. In what does this style, Exhibit "Q," differ from the style of drawers you made for H. T. Miller and H. T. Miller & Co.?

Answer. The reinforcement or front facing came down to within about an inch of the crotch and was stitched to the garment at the end, while Exhibit "Q" overlaps the seam.

6th Question. Was there any change made in the style of the first drawers and the last drawers that you made?

Answer. I know they were made in two styles while I was there—that is, the facing came to the seam in one, and the other came to within an inch of the seam. I never made a pair that the front facing overlapped the seam while I was there.

7th Question. When did you first see a pair of drawers of the style of Exhibit "Q?"

Answer. That is the first pair I have ever seen.

103 8th Question. Which were the first drawers you ever saw that overlapped the seam?

Answer. Those made by Mr. Anderson.

9th Question. You mean those like Exhibit "B," which I now hand you?

Answer. Yes, sir.

10th Question. Are you certain you made drawers for H. T. Miller & Co. and H. T. Miller?

Answer. I do not know when Mr. Miller's partner went in with him. I am certain I made them for H. T. Miller.

And further this deponent saith not.

MRS. L. V. ALLEN.

No other witness appearing, the further taking of these depositions is continued until Sept. 29th, at the same place and between the same hours.

W. CABELL TRUEMAN, *Com'r.*

Office of McGuire & Ellett, Sept. 29, 1884.

Present: Tazewell Ellett, counsel for complainant.

JOHN J. GANN, being first duly sworn, deposeth and saith as follows:

By TAZEWELL ELLETT:

104 1st Question. State your name, age, occupation, and residence.

Answer. Mr. John J. Gann; age, fifty-two; occupation, sign-painter; residence, 410 Hancock street.

2nd Question. State whether or not you ever purchased any drawers of H. T. Miller & Co.; and, if so, about when, what induced you to buy, and under what circumstances the purchase was made.

Answer. I purchased a pair of drawers of H. T. Miller & Co. It was at the time the advertisement was in the State. They advertised patent el-iptic drawers, and I went there on that account just to see if there was any difference between them and other drawers. I went in the store and asked for a pair of drawers. They showed me a pair of ordinary drawers. I asked them for the kind advertised in the State—patent el-iptic—a pair of which I purchased.

3rd Question. What induced you to refuse the first pair they offered you?

Answer. I was induced to purchase the el-iptic by the difference between them and the ordinary drawers. The difference was they had an extra piece that came over the seam somewhat
105 round, which made them more durable.

4th Question. State whether or not the pair of patent el-iptic double-back-action, three threads in the reel drawers shown you by them were identical with Exhibit "X."

Answer. Yes; they were the same.

5th Question. How was the reinforcement fixed on the drawers?

Answer. It came down the front and was stitched in the seam.

And further this deponent saith not.

JOHN J. GANN.

STATE OF VIRGINIA, *City of Richmond,* } *ss:*

I, W. Cabell Trueman, a notary public for the city aforesaid, in said State, and special commissioner of United States circuit court for the eastern district of Virginia, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me at the times and place mentioned therein.

Given under my hand this 29th day of September, 1884.

W. CABELL TRUEMAN,
N. P. and Special Com'r.

106 *Notice Attached to Foregoing Depositions.*

To Henry T. Miller & Co.:

Take notice that I shall, on the 27th day of September, 1884, at the office of McGuire & Ellett, in the city of Richmond, between the hours of 6 a. m. and 6 p. m. of that day, to wit, at 11 o'clock a. m., before W. C. Trueman, notary public and special com'r U. S. circuit court for the eastern district of Virginia, *I will* take the depositions of Mrs. D. Ellett, Mrs. Milton Allen, and others, to be used as evidence in my behalf in a certain cause pending in the circuit court of the United States for the eastern district of Virginia, at Richmond, Virginia, wherein you are respondents and I am complainant. If from any cause said depositions be not begun then and there, or being begun be not concluded, the taking of the same will be continued from time to time and at the same place until the same be completed.

Very truly y'rs,

R. H. ANDERSON,
By McGUIRE & ELLETT,
His Counsel.

Richmond, Virginia, Sept. 17, '84.

Endorsed as follows:

Executed this 18th day of Sept., 1884, by delivering to H. T. Miller & Co. a true copy of the within notice.

THOS. E. BALLARD,
D'p'ty Marshal.

107 The deposition of A. D. Irving, filed Feb'y 21st, 1885, on behalf of the complainant, referred to in the final decree.

Affidavit for Dedimus.

R. H. ANDERSON, Pl't.,
v.
H. T. MILLER & Co., D'f'ts. } In Equity.

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA,
RICHMOND, *Nov'r* 26, 1884.

This day personally appeared before me Tazewell Ellett and made oath that A. D. Irving, of Sandy Point, Texas, a witness on behalf of the complainant in the above-entitled cause, is a resident of the State of Texas and is a material witness for the complainant.

Teste: M. F. PLEASANTS, *Clerk.*

Notice.

To H. T. Miller & Co.:

Take notice that in the suit in equity depending in the circuit court of the United States for the eastern district of Virginia, wherein

I am complainant and you are defendant-, I have, in conformity with the 57th rule of the Supreme Court of the United States, prescribed for the use of the circuit courts of the United States, filed interrogatories to be propounded to A. D. Irving, a witness in
108 my behalf, and that on the 28th day of January, 1885, I shall apply at the clerk's office of said court for a commission to take the deposition of said witness, as the rule aforesaid prescribes; and meanwhile you can appear in the clerk's office of said court and file cross-interrogatories to be propounded to the said witness if you think fit.

Very resp'f'y, R. H. ANDERSON,
By His Solicitors.

Endorsed: Executed this 17th day of Jan'y, 1885, by delivering a copy of the within writ to Henry T. Miller, one of the firm of H. T. Miller & Co. Thos. E. Ballard, dep'ty marshal.

Dedimus.

UNITED STATES OF AMERICA, *Eastern District of Virginia,* } *ss:*

The United States of America to James A. Baker, Main near Congress street, Houston, Texas, Greeting:

We, reposing special confidence in your fidelity and provident circumspection, do hereby authorize and appoint you to take the testimony in writing of A. D. Irving, whom you are hereby authorized and required to bring before you at such time and place as you may designate and appoint for that purpose, and that at such time
109 and place you will proceed to examine under oath said witness upon the interrogatories hereto annexed at the instance of the complainant in a certain cause now pending and undetermined in our circuit court of the United States for the eastern district of Virginia, before the judge thereof, wherein R. H. Anderson is plaintiff and H. T. Miller and Wm. Mitchell, partners trading under the style and firm name of H. T. Miller & Co., are defendants. The answers of the witness to the annexed interrogatories you will cause to be reduced to writing in the order in which they shall be answered, and shall then be signed by said witness. At the foot thereof you will add a certificate, subscribed by yourself, stating that it was sworn to and subscribed by said witness, and the time and place when and where the same are taken, which said examination of said witness so taken, with your certificate thereto attached, you will send directed to our clerk of our circuit court of the United States for the district of Virginia sealed, with the names of the parties litigant endorsed thereupon, with early dispatch, together with this writ.

Witness the Hon. M. R. Waite, Chief Justice of the Supreme Court of the United States of America, at Richmond, Virginia, this 28th day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk.*

110 *Interrogatories Annexed.*

In the United States Circuit Court for the Eastern District of Virginia.

R. H. ANDERSON, a Citizen of Richmond, Virginia, Complainant,

vs.

H. T. MILLER and WM. MITCHELL, Citizens of Richmond, Virginia, Defendants.

Interrogatories propounded by the complainant for the examination of A. D. Irving, a witness to be produced, sworn, and examined in this cause on behalf of the complainant.

1st Interrogatory. Were you ever in the gentlemen's furnishing business; if so, when, where, with whom, and for how long?

2nd Interrog. How long, if ever, did you live with H. T. Miller & Co., and what were your duties while with them?

3rd Interrog. Did you act as cutter of drawers for H. T. Miller; and, if so, was it your duty to instruct those who made them up as to how they should be made?

4th Interrog. What was the style of drawers that you cut and instructed others to make?

5th Interrog. Did you ever cut any drawers while at H. T. Miller's the front facing of which extended beyond the seam?

6th Interrog. Were there any drawers made at H. T. Mil-
111 ler's during the time that you lived with him by any of his employees the front facing of which extended beyond the seam as it does in the pair of drawers filed herewith marked Exhibit Q?

7th Interrog. How was the front facing in the drawers cut and made in the establishment of H. T. Miller at that time arranged?

8th Interrog. When drawers are cut for front facing to stop at seam can they be put together so that front facing will extend over seam?

9th Interrog. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

McGUIRE & ELLETT,
Solicitors for Complainant.

Cross-interrogatories to be propounded to A. D. Irving on behalf of the defendants, H. T. Miller & Co.

1st X Question. When were you employed by Henry T. Miller?

2nd X Question. When were you discharged?

3d X Question. Where did you do your work for Miller while in his employ; was it at his store or at the factory?

112 4th X Question. Were you ever employed at the factory?

5th X Question. Who was foreman or head cutter at the factory while you were in Miller's employment?

6th X Question. Why were you discharged?

7th X Question. When you were discharged did you not insist that you would remain until a year from your first employment had expired and claim that you were employed for a year?

8th X Question. Did not Mr. Miller forbid your return to the store or remaining any longer?

9th X Question. Were the feelings between yourself and Mr. Miller friendly when you departed and are they friendly now?

JNO. S. WISE, *P. D.*

STATE OF TEXAS, *Harris County:*

Answers and depositions of A. D. Irving, taken before me, James A. Baker, the commissioner named in the commission hereto attached, in answer to interrogatories and cross-interrogatories hereto attached, and by virtue of said commission, to be read in evidence on behalf of the complainant in the case of R. H. Anderson *vs.* H. T. Miller & Co., pending in the circuit court of the United
113 States for the district of Virginia, at Richmond.

Said witness, being first duly sworn, in answer to said interrogatories and cross-interrogatories deposes and says as follows:

In answer to the first interrogatory-in-chief he says: I have been in the gentlemen's furnishing business about 12 years in Baltimore, Md., and Richmond, Va., Louisville, Ky., and Houston.

In answer to the second interrogatory-in-chief witness says: I was cutter for H. T. Miller & Co. for about 9 or 10 months. I believe it was in 1881.

In answer to the third interrogatory-in-chief witness says: Miller & Co. had two cutters at that time, of which I was one. I cut a portion of the drawers and gave instructions as to the making up of all my work.

In answer to the fourth interrogatory-in-chief the witness says: The style of drawers which I cut cannot be described so well in words as by sample. I therefore attach a sample, marked "J. L. D. L." The sample exhibited as part of this deposition shows the front facing in two pieces; the drawers as cut by and made under my
114 direction had the front facing in two pieces, the same as the sample. The difference between the sample and the drawers which I cut and had made will appear from the right-hand facing of the sample, in that both facings were inclosed in the cross-seam, as shown by the right-hand facing of the sample, being pinned at the seam.

In answer to the fifth interrogatory-in-chief he says: I never did.

In answer to the sixth interrogatory-in-chief the witness says: Not to my knowledge.

In answer to the seventh interrogatory-in-chief witness says: The facing extended to the cross-seam and was closed in with the seam, as shown by the front facing of the Exhibit "J. L. D. L." to this deposition, fastened with a pin.

In answer to the eighth interrogatory-in-chief the witness says: They cannot, because the front facing is cut just long enough to extend to the seam.

115 In answer to the ninth interrogatory-in-chief the witness says: I know nothing further.

In answer to first cross-interrogatory witness says: About March first, 1881.

In answer to second cross-interrogatory witness says: I left there about first of November, 1881.

In answer to third cross-interrogatory witness says: At the store.

In answer to fourth cross-interrogatory witness says: Never.

In answer to fifth cross-interrogatory witness says: J. M. Cox.

In answer to sixth cross-interrogatory witness says: Miller and I disagreed about several matters.

In answer to seventh cross-interrogatory witness says: I claimed, according to my contract, that I was employed for a year and would expect my salary up to the date of the expiration of the year.

In answer to the eig-th cross-interrogatory witness says: I don't remember; I believe not.

In answer to ninth cross-interrogatory witness says: No;

116 they were not. I have got no feeling whatever of any kind towards Mr. Miller now.

And now, having fully answered, I here sign my name.

A. D. IRVING.

STATE OF TEXAS, *Harris County:*

I, James A. Baker, the commissioner named in the commission hereto attached, do hereby certify that the above and foregoing answers of the witness, A. D. Irving, to the interrogatories and cross-interrogatories hereto attached were this day taken by me at my office, on Main street, in the city of Houston, in the county aforesaid, after said witness was first duly sworn, as mentioned in the caption; and, after said answers were printed, in my presence the witness read them over *in my presence*, and swore that the same are correct, and signed them in my presence at the time and place where taken; to certify which I here sign my name.

Dated Houston, Texas, February 21, 1885.

JAS. M. BAKER,
Commissioner.

117 *Depositions on Behalf of Defendants, Filed April 3rd, 1885, Referred to in Final Decree.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

R. H. ANDERSON *v.* H. T. MILLER & Co.

The depositions of Sarah E. Blunt, J. M. Cox, and Lottie M. Blunt, taken before me, A. W. Patterson, a notary public in & for the city of Richmond, State of Virginia, to be read as evidence on behalf of the defendants in the above-entitled cause & court. Said depositions are taken, without formal notice, by agreement between Messrs. Tazewell Ellett, counsel for complainant, and John S. Wise, counsel for defendants, at the office of John S. Wise, in the city of Richmond, Va., this 2nd day of April, 1885, beginning at 2 o'clock p. m.

Present: Mr. Tazewell Ellett, for complainants; John S. Wise, for defendants.

Complainant, by counsel, objects generally to taking of this
118 deposition, but not to the form of the above notice or to time & place.

Miss SARAH E. BLUNT, a witness of lawful age, being by me first duly sworn to testify on behalf of defendants, & interrogated by JOHN S. WISE, deposes & says:

By Counsel JOHN S. WISE, for defendant-:

1 Ques. Please state your name, residence, & occupation.

Ans. Sarah E. Blunt; 316 South 4th St., city of Richmond, Va.; have no occupation.

2 Ques. by same. Please look at the two pairs of drawers now shown you & tell me all you know about them, to wit, one pair marked Ira W. Blunt and one pair marked Walter J. Blunt.

Ans. These marked Walter J. Blunt were cut by Mr. Cox. I bought the linen & carried it to him myself, & my brother went there & had his measure taken. I made them myself in August, 1879. Mr. Cox sent them to me after they were cut. These marked Ira W. Blunt—I know that Mr. Cox cut those, too, & that they were made at home. We never put out any work, but always make it at home. They were made the same fall, 1879; I don't know what month.

119 3rd Ques. by same. Had you any measure by which you cut these drawers? &, if so, please produce the same.

Ans. I had no measure, except the pattern—I mean I had no measure. I only had the drawers just as they were cut by Mr. Cox. I now file a pattern which I cut myself from the drawers to save the expense of having any more drawers cut by him, Mr. Cox.

Filed, marked S. E. Blunt.

4th Ques. by same. State what you know of the pattern now shown you, marked "Exhibit M. A. Blunt."

Ans. Mr. Cox cut this pattern in the fall of 1879. These are my older brother's, Ira W. Blunt, & the drawers were cut by this pattern & made at home.

5th Ques. by same. State whether or not since 1879 you have from year to year been making the drawers of your brothers of the same pattern as those above exhibited.

Ans. I have; have some at home now; cut & not made.

Cross-examination by Mr. ELLETT:

1 X Ques. You say that Mr. Cox cut these drawers. How do you know that he cut them?

Ans. Because Mr. Miller had no other cutter at the time.

120 2d X Ques. by same. Are you certain that Mr. Miller had no other cutter?

Ans. None that I know of; & I took the linen to him to cut the drawers. I was in the habit of buying for my brother & taking the goods or sending them to Mr. Cox to cut.

3rd X Ques. by same. Are you familiar with the men employed by Mr. Miller at that time?

Ans. None but Mr. Cox. I never knew any of the men who worked for Mr. Miller, except Mr. Cox. I was only personally acquainted with Mr. Cox.

4th X Ques. by same. Were you present when your brother's measure was taken?

Ans. I was not.

5th X Ques. by same. You do not know, then, of your personal knowledge, who took your brother's measure?

Ans. No, sir; I do not, but suppose that Mr. Cox did, as they had no other cutter at that time. I do know that they had no other cutter at that time.

6th X Ques. by same. Do you make all of your brother's drawers?

Ans. Yes; I have done so ever since the war.

7th X Ques. by same. Since you made this pattern have you made all of his drawers of this style?

121 Ans. I have.

8th X Ques. by same. Do you know that these drawers, "Exhibit Ira W. Blunt," were some of the first that were made by you?

Ans. No; I never made them, but I know that they were made by this pattern. My brother's wife made them & I assisted her. I live with my brother, Ira W. Blunt, & whenever his wife needs my assistance I help her.

9th X Ques. by same. May not the pair exhibited be one of a later set made for him?

Ans. They are the first that were made.

10th X Ques. by same. How do you know that they were the first that were made?

Ans. Because I asked her for a pair of the first when Mr. Miller

sent for me by my niece, as she had told Mr. Miller that I had made the drawers by the pattern. I asked her for a pair of the first & she gave me these of Ira Blunt's. As to Walter Blunt's, I have had charge of his clothes & I know my work & know his clothes.

11th X Ques. by same. I understand, then, that all that you know of Ira W. Blunt's drawers is what his wife told you?

Ans. Yes, sir; when she gave them to me.

12th X Ques. by same. How do you know that this is a
122 pair of the first drawers made by said pattern for Walter J. Blunt?

Ans. Because I made them myself. Those are the first that I made him by the pattern & I have never made him but one pair since, because he wears flannel & never wears these more than two months in the year.

13th X Ques. by same. Did you ever make any for anybody else of this pattern?

Ans. Never.

14th X Ques. by same. Do you know where Miss Lottie Blunt was employed in August, 1879—that is, at the time that you claim these exhibits were cut?

Ans. By Mr. Miller.

15th X Ques. by same. How long had she been employed there at that time?

Ans. I could not say.

NOTE.—The counsel for def't- objects to the foregoing two questions & all others of similar character unless the plaintiff makes the witness his own.

13th X Ques. by same. How do you know that you cut these drawers in August, 1879?

Ans. I know by the death of a friend of mine, who died in Washington at the time. Mr. Cox cut them & I made them right away.

123 14th X Ques. by same. What time did your friend die & what was her name?

Ans. She died in July; Mrs. Nott was her name.

15th X Ques. by same. How does this enable you to fix the time of the cutting of the drawers?

Ans. I must confess that I never take much notice of dates, but I know that this friend of mine died in July & I made the drawers in August.

16th X Ques. by same. Did the death of your friend have any connection with the making of the drawers?

Ans. No, sir.

17th X Ques. by same. Do you know where Mrs. Nott was buried?

Ans. She was buried in Hollywood. She was brought to my brother's house & taken from there to Broad-Street church, & from there to Hollywood.

18th X Ques. by same. When were you first approached concerning the production of these exhibits & by whom?

Ans. I couldn't say exactly when, but by my niece, Miss Lottie

Blunt, & Mr. Miller also. As nearly as I can remember, it was in January of this year.

19th X Ques. by same. Was Miss Lottie Blunt then & is she now employed by H. T. Miller & Co.?

Ans. She was & is still.

124 20 X Ques. by same. Where did you get the Exhibit Walter J. Blunt & from whom, & where?

Ans. I got them from my brother Walter himself. I told him I wanted them, & he told me to take them. It was in December, I think, at his home, 303 E. Main St. I do not live with him; he is married.

21 X Ques. by same. What motive had you in asking him for them at that time?

Ans. My niece, Miss Lottie Blunt, asked me to get them. It was in January that Mr. Miller asked me about them.

22d X Ques. by same. State what passed between your brother & yourself when he gave you the drawers.

Ans. I asked him for those linen drawers that Mr. Cox cut. He told me to go & get them, & I told him that I did not like to come to court. He says, O, pshaw, go & do anything you can for Henry; that he would go himself if it was necessary.

23d X Ques. by same. You identified these drawers yourself & did not depend on what your brother told you about them?

Ans. Yes, sir; I went & got them out of the drawer, I think, myself.

24th X Ques. by same. You say, in answer to the 5th question, that you have from year to year been making the drawers

125 of your brother & you afterwards state that you have only made two sets for them; explain this.

Ans. From this pattern, I said.

25th X Ques. by same. In answer to the 5th question, which reads: "State whether or not since 1879 you have from year to year been making the drawers of your brothers of the same patterns as those above exhibited," & you answer, "I have; have some at home now, cut & not made," & afterwards say on cross-examination that you have only made them two sets. Please reconcile these two statements.

Ans. I never made any for Ira W. Blunt by myself—always make Walter's. I make them whenever he needs them. I didn't say that I made them two sets. I said I had made Walter two sets.

26th X Ques. by same. Am I to understand, then, that you have never made Ira W. Blunt any drawers of this pattern & have only made Walter J. Blunt two sets.?

Ans. That is what I mean & have said all the time; I have assisted Ira Blunt's wife in making them always.

And further this deponent saith not

SARAH E. BLUNT.

126 J. M. Cox, a witness of lawful age, being by me first duly sworn, deposes and says:

By JOHN S. WISE, Esq., for def't-:

1st Ques. Look at the "Exhibit M. A. Blunt" & state what you know about it; it was filed with Miss S. E. Blunt's deposition.

NOTE.—Counsel for plaintiff excepts generally to the deposition of Mr. J. M. Cox.

Ans. I cut the pattern in 1879 for Mr. Blunt. That is all that I know about it. I know this is the pattern that I cut.

2d Ques. by same. How do you know that this is the same pattern?

Ans. By my handwriting on it, & by the system on which it is cut, & that I never cut any other for him at that time.

3d Ques. by same. Look at the drawers now shown you, marked "Dr. Bargess," two pairs, & state what you know about them.

(Question withdrawn.)

4th Ques. by same. Were you in the employ of Mr. Miller at the time that Mr. A. D. Irving was there?

Ans. I was.

5th Ques. by same. Look at the drawers now shown you, marked "Irving," & state who cut them.

(Question excepted to as being secondary evidence.)

127 Ans. They are cut under the same system that Mr. Irving cut, & look like Mr. Miller's work. For a long while after Mr. Irving left there were some drawers made as samples in the store, & think this is a pair of those drawers, cut by Mr. Irving & made up under my supervision.

6th Ques. by same. State whether or not, during the entire period of Mr. Irving's employment by Mr. Miller, you were cutting & making drawers for Mr. Miller of the pattern like the "Exhibit M. A. Blunt," with the reinforcement extending over the crotch seam.

(Question excepted to as being secondary evidence.)

Ans. I was.

7th Ques. by same. Where were you employed & where was Irving, & did your employment ever bring you together?

Ans. I was employed in the factory; had supervision of the factory, & stayed there. Mr. Irving stayed in the store. I had supervision of his work also, being manager of the shirt & drawers department of the business. Mr. Irving had nothing to do with the managing or making. We were frequently brought together.

8th Ques. by same. What opportunity had Irving to know what sort of drawers you were cutting?

128 Ans. The only opportunity he had was by examining the drawers after they were made & sent to the store from the factory. He was prohibited from going into the factory.

9th Ques. by same. During your joint service what proportion of the cutting of drawers was done by you, respectively?

Ans. Mr. Irving cut only a few.

Cross-exam'n by TAZEWELL ELLETT, Esq.:

1st X Ques. How do you fix the date on which the "Exhibit M. A. Blunt" was cut?

Ans. I know that I cut it the first summer that I became acquainted with the family, which was in 1879.

2nd X Ques. by same. Do you not daily cut a great many patterns and drawers?

Ans. I do not cut many patterns of drawers; do cut a good many drawers.

3d X Ques. by same. Was there anything special that attracted your attention to the time of the cutting of this pattern for Mr. Blunt?

Ans. I remember it well because Mr. Blunt's family was one of the few that I knew at the time. There was nothing further to fix the time than that I cut it shortly after becoming acquainted
129 with the family.

4th X Ques. by same. Could not drawers cut upon a pattern for the front facing to stop at the seam be easily extended slightly over the seam in the making?

Ans. The facing could be carried either into the seam or across the seam, but if across the seam it could not be carried very far—half an inch or so.

5th X Ques. by same. State whether or not the relations existing between Anderson & yourself are friendly or unfriendly.

Ans. Not very friendly, I wouldn't suppose.

6th X Ques. by same. Why not?

Ans. I never had any difficulty; there is no special enmity. I understand, generally, that he dislikes me & I reciprocate.

7th X Ques. by same. Did not high words pass between you on one occasion in Anderson's factory?

Ans. I went into Mr. Anderson's factory to see Mr. Dean, & Mr. Anderson spoke to me in his place in an ungentlemanly manner. I scratched him off my roll of gentlemen & took no further notice of him. There were no high words on my part.

130 8th X Ques. by same. Did you not then say that you would get square with him some time in future?

Ans. I don't remember the exact words that passed between us.

And further this deponent sait- not.

J. M. COX.

Miss LOTTIE M. BLUNT, a witness of lawful age, being first duly sworn, deposes & says:

By Capt. JOHN S. WISE:

1st Ques. Please state your name, age, residence, & occupation.

Ans. My name is Lottie M. Blunt; my age is 23; my residence is 316 South 4th St., Richmond, Va., & my occupation is forelady for H. T. Miller & Co.

2d Ques. by same. How long have you been at the head of Mr. Miller's factory?

Ans. Ever since 1881; some time in March.

3d Ques. by same. State what your duties are.

Ans. To give out & receive all work cut, & to examine the work & send it down to the store.

4th Ques. by same. State whether drawers like those made by your aunt for Walter J. Blunt have been made at the factory since you have been there; &, if so, since when.

131 Ans. They have been made there ever since I have been there—that is, since 1881.

And further this deponent saith not.

LOTTIE M. BLUNT.

The foregoing depositions were duly taken, sworn to, & subscribed before me at the time, place, & under the circumstances set out in the caption thereof.

Given under my hand this 2nd day of April, 1885.

A. W. PATTERSON, *N. P.*

132 *Letter of Henry Orth, Referred to in Final Decree.*

WASHINGTON, D. C., *March 22d*, 1882.

R. H. Anderson, Esqr., care of R. H. Anderson & Co., 1009 Main St., opposite post office, upstairs, Richmond, Va.:

I herewith send you petition, power of attorney, specification, and oath for your signature and those of proper witnesses and notary.

Petition.—This you will please sign as indicated and have your signature certified to by those of two witnesses in the place indicated.

Specification.—This is to be executed the same as the petition in the places indicated.

Oath.—To be signed before a notary public and the latter to administer the oath and certify to that effect by his signature and seal or other indication of authority.

I will meanwhile prepare the drawings, so that the case may be filed on return of the papers, if at all possible, as I am exceedingly busy and have already dropped everything to prepare your case.

With the papers you will please remit as follows:

Preparing application (petition, power of attorney, specification, oath, and drawings) and prosecuting the said application before the primary examiner	$30
Govern't fee on filing the application	15

133 that is to say, you will please remit $45.00 for first costs; the balance or second Govern't fee of $20.00 can be paid when the application is allowed or within six months from the date of the allowance and before the patent will be issued, making the total cost of the patent $65.

Yours respectfully, HENRY ORTH.

P. S.—Please send me another sample, as I had to rip the one you sent.

Endorsement on foregoing letter: "Filed May 2d, 1885, on the hearing, by leave of court and without objection, as part of deposition of R. H. Anderson. Ro. W. Hughes, judge."

134 UNITED STATES OF AMERICA, *To wit:*

The President of the United States to the judge of the circuit court of the United States for the eastern district of Virginia, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court before you, between Robert H. Anderson and Henry T. Miller and Wm. Mitchell, partners trading under the firm name and style of H. T. Miller & Co., a manifest error hath happened, to the great damage of the said Robert H. Anderson, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the East. District of Virginia.

135 [Endorsed:] No. 341. United States circuit court, district of Virginia. Robert H. Anderson *vs.* H. T. Miller & Co. Appeal to —. Filed June 12, 1885. M. F. Pleasants, clerk.

136 Circuit Court of the United States of America for the Eastern District of Virginia.

ROBERT H. ANDERSON
vs.
HENRY T. MILLER & WM. MITCHELL, Partners Trading under the Firm Name of H. T. Miller & Co.

Know all men by these presents that we, Robert H. Anderson and Otis H. Russell, are held and firmly bound unto Henry T. Miller in the sum of two hundred dollars, to be paid to the said Henry T. Miller & Co., their heirs, executors, administrators, or assigns; to

which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of June, A. D. 1885.

Whereas the above-named Robert H. Anderson hath prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such that if the above-named Robert H. Anderson shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

R. HUNTER ANDERSON. [SEAL.]
OTIS H. RUSSELL. [SEAL.]

Sealed and delivered in presence of & approved by—
M. F. PLEASANTS, *Clerk.*

137 [Endorsed:] No. 341. United States — court, district of Virginia. Robert H. Anderson *vs.* Henry T. Miller & Co. Bond. Filed June 18, 1885. M. F. Pleasants, clerk.

138 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Virginia, }

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete copy of the record and proceedings in the cause in the caption hereof mentioned as the same remains on the files of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, Virginia, in said district, this 7th day of October, A. D. 1885.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk.*

Endorsed on cover: E. Virgina C. C. U. S. No. 135. Robert H. Anderson, appellant, *vs.* Henry T. Miller and William Mitchell, partners under the firm name of H. T. Miller & Company. Filed October 16, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1888.

No. 135.

ROBERT H. ANDERSON, Appellant,

vs.

HENRY T. MILLER and WILLIAM MITCHELL, Partners, under the firm-name of H. T. MILLER & CO.

BRIEF FOR APPELLANT.

CHAS. S. WHITMAN,
Counsel for Appellant.

Thomas McGill & Co., Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

October Term 1888.

ROBERT H. ANDERSON, Appellant,
vs.
HENRY T. MILLER and WILLIAM MITCHELL, Partners, under the firm-name of H. T. Miller & Company. } No. 135.

Brief for Appellant.

STATEMENT OF THE CASE.

This is an appeal from the decree in equity of the Circuit Court of the United States for the Eastern District of Virginia, dismissing the bill of the appellant, who was the complainant in that court. The case is a suit upon letters-patent No. 265,733, for an Improvement in Drawers, granted to the complainant on the 10th day of October, 1882, upon an application filed June 24th, 1882. The bill of complaint is in the usual form of such bills, and alleges that Robert H. Anderson, the appellant, was the original and first inventor of the invention patented, and charges that the defendants have infringed the invention patented, and prays in the customary form for an injunction and account of profits. The answer, printed Record, page 9, is as follows:

"These respondents, without waiving the demurrer, answer this bill as follows:

"They deny, traverse, and put in issue every allegation of the bill as fully as if the same were set forth and denied in detail.

"Further answering, they say it is not true that said Anderson was the true original, and first inventor of the improvement in drawers, for which he got the patent in the bill mentioned. It is not true that the improvement had not been in public use or on sale more than two years prior to his application. Respondents aver, on the contrary, drawers reinforced as described in his letters-patent had been made and in public use and on sale by sundry and divers persons for many years prior to his application.

"Respondents deny that they are using or ever have used the complainant's patent or any part thereof, identically or substantially. These respondents say that Henry T. Miller and Henry T. Miller & Co. have been manufacturing one particular kind, and only particular kind, of reinforced drawers for more than five years hitherto continuously, a specimen of which drawers manufactured by him is herewith filed as 'Exhibit A,' and prayed to be taken as part hereof, and they solemnly aver that these are the only kind of reinforced drawers that have been manufactured by them, or either of them, during the last five years.

"They also file, as 'Exhibit B,' a pair of drawers of the manufacture of the complainant.

"They also file, as 'Exhibit C,' a pair of drawers manufactured by Levis under patent of March 4th, 1879.

"They also file the affidavits of their two cutters, F. J. Dean and Joseph M. Cox, all of which they pray be taken as part of this bill.

"Respondents further answer and say, in the first place, that they utterly deny and repudiate the allegation of the bill that the drawers manufactured by them interfere with or infringe upon the patent rights of the plaintiff in any way, and in the second place that even if the drawers manufactured by them are either identical or substantially the same as those manufactured by the complainant, he is entitled to no relief whatever against them, because these respondents are prepared to prove that Henry T. Miller & Co. and Henry T. Miller have hitherto continuously, for over five years, manu-

factured the identical reinforced drawers filed as 'Exhibit A,' and that for over four years prior to the application for the said patent they used and sold reinforced drawers of the pattern and design of those now filed as 'Exhibit A,' and none others.

"In answer to the complainant's interrogatories they say:

1. To the first interrogatory they answer 'Yes.'
2. To the second interrogatory they answer 'No.'
3. To the third interrogatory they answer 'No.'
4. To the fourth interrogatory they answer 'No.'
5. To the fifth interrogatory they answer 'No.'
6. To the sixth interrogatory they answer 'No.'

"Now, having fully answered this bill of complainant, they pray to be hence dismissed, with their costs in this behalf expended."

R. H. Anderson, the complainant, testifies that he made the invention in the fall of 1878 (Record, page 25), and a letter from his solicitor shows that his application for a patent was completed March 22d, 1882. (Record, page 56.)

The evidence introduced by the defendant consists of depositions attempting to establish that the invention patented was in public use and on sale for more than two years prior to the filing of his application. The cause having been set down for a hearing, and having been heard on the pleadings and proof before the Hon. Robert W. Hughes, Judge, a decree was entered, dismissing the bill of complainant. (Record, page 11.)

Specification of Errors.

1. The court below erred in overruling a motion made at the hearing to strike out the testimony of the witnesses for the defense who testified to the prior use of the patented article.

2. It erred in adjudging "that, on the facts proved, the defendants, by reason of the prior use of the article

manufactured by them in the bill and proceedings mentioned, for a period of over two years prior to the granting of the patent to the complainant, are entitled to judgment."

Brief of the Argument.

By referring to the answer (printed Record, page 9), there is not statutory notice of want of novelty, or of two years' public use prior to the filing of the application. The answer avers "that it is not true that said Anderson was the true, original, and first inventor of the improvement in drawers for which he got the patent in the bill mentioned," but it does not give the names and residences of the persons alleged to have had the prior knowledge of the thing patented, or where or by whom it was used. The answer proceeds to say: "It is not true that the improvement had not been in public use or on sale more than two years prior to his application. Respondents aver, on the contrary, drawers reinforced as described in his letters-patent had been made and in public use and on sale by sundry and divers persons for many years prior to his application;" but here the allegation ends. No intimation is given of the names and residences of the persons alleged to have had the prior knowledge of the public use or sale, or where or by whom it was put in public use or on sale.

The only allegation in the answer about a prior patent is as follows: "They also file, as 'Exhibit C,' a pair of drawers manufactured by Levis under patent of March 4th, 1879;" but there is no allegation of the name of the patentee or the date of the patent.

In denying the infringement, the answer is as follows:

"Respondents further answer and say: in the first place, they utterly deny and repudiate the allegation of the bill that the drawers manufactured by them interfere with or infringe upon the patent right of the plaintiff in

any way; and, in the second place, that, even if the drawers manufactured by them are either identically or substantially the same as those manufactured by the complainant, he is entitled to no relief whatever against them because these respondents are prepared to prove that Henry T. Miller & Co. and Henry T. Miller have hitherto continuously for over five years manufactured the identical reinforced drawers filed as 'Exhibit A,' and that for over four years prior to the application for the said patent they used and sold reinforced drawers of the pattern and design of those now on file as 'Exhibit A,' and none others."

It is evident that such language as this cannot be tortured into a notice that the invention "had been in public use or on sale in this country for more than two years before his application for a patent." The defendant evidently do not here assail the patent on this ground, for if, as they say, the drawers manufactured by them do not infringe the patent, they do not anticipate it; moreover, this allegation does not state *where* and by whom the invention was used; although it is alleged that the articles were manufactured, it is not said that they were manufactured in Richmond, or anywhere else.

The decisions of this court upon the subject have been uniform. In Evans *v.* Eaton (3 Wheaton, 454) Chief Justice Marshall said in reference to the sixth section of the patent act of 1793:

"Notice is directed for the security of the plaintiff and to protect him against that surprise to which he might be exposed from an unfair use of the privilege."

In Silsby *v.* Foote (14 How., 218) Mr. Justice Curtis, in delivering the opinion of the court, said, in construing the fifteenth section of the patent act of July 4th, 1836:

"The act does not attempt to prescribe the particulars which such a notice shall contain. It simply requires notice. But the least effect which can be allowed to this requirement is that the notice should be so full and par-

ticular as reasonably to answer the end in view. *This end is not merely to put the patentee on inquiry, but to relieve him from the necessity of making useless inquiries and researches, and enable him to fix with precision upon what is relied on by the defendants, and to prepare himself to meet it at the trial. This highly salutory object should be kept in view, and a corresponding disclosure exacted from the defendant of all those particulars which he must be presumed to know, and which he may safely be required to state, without exposing himself to any risk of losing his rights. Less than this would not be reasonable notice, and, therefore, would not be such a notice as the act must be presumed to have intended.*"

In Philadelphia and Trenton R. R. Co. *v.* Stimpson, (14 Pet., 448,) Mr. Justice Story, in commenting on the 15th section of the act of 1836, said:

"The object of this most salutary provision is to prevent the patentee being surprised at the trial of a cause by evidence of a nature which they could not be presumed to know or to be prepared to meet, and thereby subject them either to most expensive delays or loss of their cause."

In Agawam Co. *v.* Jordan (7 Wall., 583), Mr. Justice Clifford said:

"Persons sued as infringers may plead the general issue in suits at law, and may prove, as a defense to the charge, if they have given the plaintiff thirty days' notice of that defense before the trial, that the patentee was not the original and first inventor of the thing patented; but the same section which authorizes such a defense provides that, whenever the defendant relies in his defense on the fact of a previous invention, knowledge, or use of the thing patented, 'he shall state in his notice of special matter the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, *and where the same had been used.*'" (Wilton *v.* Railroad, 1 Wallace, Jr., 195.)

"Evidence to prove such a defense, in a suit at law, is not admissable without an antecedent compliance with these conditions, and the settled practice in equity is to

require the respondent, as a condition precedent to such a defense, *to give the complainant substantially the same information in his answer.* Unless the practice were so, the complainant would often be surprised, as the rule of the law is that the letters-patent afford a *prima-facie* presumption that the patentee is the original and first inventor of what is therein described as his improvement, and if the respondent should not be required to give notice in the answer that proofs would be offered to overcome that presumption and establish the opposite conclusion very great injustice might be done, as the complainant might rely upon that presumption and fail to take any countervailing proofs." (Teese *v.* Huntingdon, 23 Howard, 10.)

In Blanchard *v.* Putnam (8 Wallace, 420) it was held that where, in a suit at law for infringement of a patent, witnesses testify to previous invention, knowledge, or use of the thing patented, the judgment will be reversed unless an antecedent compliance with the requirements of the fifteenth section of the patent act, requiring in the notice of special matter the names and places of residence of those whom the defendant intends to prove possessed prior knowledge, and where the same had been used, appear in the Record. And this, although no reversal for this cause have been asked by counsel, but the case has been argued wholly on other grounds.

The testimony is conflicting and irreconcilable.

J. M. Cox testifies (Record, page 12) that the drawers, "Exhibit Q," were cut and made by him on the 29th day of May, 1880, for C. A. Baldwin, and they were returned, and that the great majority of drawers cut and made have been drawers of this make and pattern; that he has made them regularly and continuously of this pattern for over five years, and that he has made no reinforced drawers except upon this pattern. The testimony of Cox and that of other witnesses for the defendant is entirely irreconcilable with the testimony of the complainant.

Charles L. Sizer testifies as follows (Record, pages 18, 19, 24, and 25):

1st question. State your name, age, occupation, and residence.

Answer. Charles L. Sizer; age, twenty-one; occupation, gents' furnishing goods; residence, 411 North Fourth street.

2d question. By whom were you employed before you accepted your present situation?

Answer. By H. T. Miller & Co. I went to live with him in 1880, about March, and left in February, 1882. I went to work for him again in September, 1882, and left him again in February, 1883.

3d question. What were your duties when in the employ of H. T. Miller & Co.?

Answer. My duty was to stay in the store. I did something of everything.

4th question. Did you act as salesman during these periods?

Answer. Yes; I sold most of the goods that were sold over the counter.

5th question. State whether or not it was your duty to handle and sell drawers.

Answer. Yes, sir.

6th question. Were you, as salesman, familiar with the different styles of drawers sold by H. T. Miller & Co.?

Answer. Yes, sir.

7th question. State whether or not it was your duty, in showing these drawers, to set out the advantages to customers.

Answer. Well he never told me to do it. There was no big advantage in it.

8th question. Did you or not, as salesman, exhibit these drawers to customers, and explain such advantages as they possessed, if any?

(Excepted to as leading, and as not helped by the insertion of the word "or" after exception.)

(NOTE.—The word "or" was inserted prior to the statement of the grounds of exception by the counsel for the respondents.)

Answer. If I found a customer hard to sell, I did; if not, I didn't.

9th question. Look at the drawers which I now hand you, marked 'Exhibit A,' and state whether or not you ever saw or sold any of similar pattern and style while living with H. T. Miller & Co.

Answer. I never seen any while I was living with them, but I saw them after I left there. That is where I first saw them—in H. T. Miller & Co.'s.

10th question. State whether or not your duties as salesman were such that, had this style, "Exhibit A," been in stock, you would have noticed it.

Answer. Yes, sir; if it had been there I would have noticed it.

11th question. How long have you been engaged in the gent's furnishing business?

Answer. About five years.

* * * * *

17th question. Look at the style "Exhibit Q," which I now hand you, and state whether or not it is one of a set of drawers sold by H. T. Miller & Co. to C. A. Baldwin during the time that you lived with H. T. Miller & Co.?

Answer. No, sir; they were jean(s) drawers, not linen; the ones that I sold him were jean(s) drawers, not linen.

18th question. Did you know of any linen drawers going from H. T. Miller & Co. to C. A. Baldwin during the time that you lived with them?

Answer. No, sir.

* * * * *

2d question. Did Mr. Miller ever travel while you were with him; and, if so, who was salesman in the store and in charge of the same during his absence?

Answer. Yes, sir; I was in charge of the store during his absence.

3d question. Did this ever occur shortly after you went to live with H. T. Miller?

Answer. Yes, sir.

4th question. Do you claim to be an expert in measuring and cutting drawers, or as salesman and expert in the styles of the same?

Answer. I claim to be in measuring them, but not in cutting them; as salesman, also.

5th question. When Miller & Cox took the measures for drawers, who put them down, as a rule?

Answer. I did.

6th question. Were you often absent from H. T. Miller's while in his employ?

Answer. No, sir; I had no vacation, but spent about one-third of my time in collecting.

7th question. You state, in answer to the 24th cross-question, in reference to C. A. Baldwin's having given but one order for drawers, that "he might, while I wasn't there," have given other orders. Is it probable that other orders were given by C. A. Baldwin, and that they did not come under your attention during the course of ordering, making, and delivering?

Answer. As a rule, such would not occur; for I saw everything that went out of the store.

8th question. State whether or not you know positively that H. T. Miller & Co. made other styles of drawers than "Exhibit A"?

Answer. Yes, sir; they did make other styles, as they did not make any of the style "Exhibit A" while I lived with them.

9th question. State whose duty it was to look after the delivery of all custom-made goods while you were with H. T. Miller and H. T. Miller & Co.?

Answer. It was my sole duty while with H. T. Miller; John Christian's duty while with H. T. Miller & Co.

10th question. In answer to question 56, cross-examination, you say "both the same," having been asked the difference between the size-mark and stock-mark. Explain what you mean by this.

Answer. The lower figure, or 32, as in this case, signifies the stock-mark; the 36 signifies the size; the No. 91 signifies custom-make.

11th question. Look at these drawers, "Exhibit Q," and state whether or not a pair of drawers made May 29th, 1880, would have the appearance of these.

Answer. No, sir; it would be impossible. Goods in stock that length of time would certainly turn yellow, and these look like bran-new ones, just made.

Robert H. Anderson testifies as follows (Record, page 27):

15th question. What relations exist between the witness (J. M. Cox) and yourself?

Answer. They are very bad. He is the sole cause of the unpleasantness between Miller and myself.

16th question. State how these unkind feelings arose.

Answer. About the fall of '80 Mr. Cox was cutting for me after he quit work at Mr. Miller's. My attention being called during that time to a letter written to one of my hands asking her to come and work for him at Mr. Miller's, I felt very much outraged at the double dealing of J. M. Cox, and so told him at the time, which made him an everlasting enemy of mine. When leaving me he vowed vengeance if he lived long enough.

Charles A. Baldwin testifies as follows (Record, page 29):

1st question. Please state your age, name, and occupation.

Answer. Am fifty-eight years old; Charles A Baldwin, and am a merchant.

2d question. State whether or not you ever purchased any drawers from H. T. Miller or H. T. Miller and Co., and the circumstances under which they were purchased.

Answer. I only remember buying some cotton jean (s) drawers. I went in there to buy some linen drawers, and Mr. Miller advised me to buy the jean(s) drawers, which I did; I don't remember buying any other drawers from them.

Mrs. D. Ellett testifies as follows (Record, page 43):

7th question. Look at the drawers which I now hand you, marked "Exhibit Q," and state whether or not that is the style of drawers you finished off for H. T. Miller.

Answer. No, sir.

8th question. State the difference in the style of "Exhibit Q" and the drawers that you finished off while with H. T. Miller.

Answer. The reinforcement just came down to the seam and was stitched across in the drawers I finished. In these drawers, "Exhibit Q," it overlaps the seam.

9th question. How many pairs of drawers do you think you finished for H. T. Miller while finishing for him?

Answer. I reckon it would average 25 pairs a week.

10th question. State what you mean by "finishing off."

Answer. Working the button-holes, sewing on buttons, and hemming tapes in the crotch and at the back.

11th question. While hemming this tape in the crotch, did you ever finish any of the style of "Exhibit Q"?

Answer. I don't remember whether I ever did or not.

12th question. Did you ever notice any of this style of drawers, "Exhibit Q," during that time?

Answer. No, sir; I did not.

A. D. Irving, a cutter in the employ of H. T. Miller & Co. at the same time that Cox was employed, testifies that there were no drawers made at H. T. Miller's during the time that he lived with him the front facing of which extended beyond the seam, as it does in "Exhibit Q."

As was said by Mr. Justice Cox in the case of Ernest *v.* Buffalo Lubricating Oil Co. (20 Fed. Rep., 848)—

"The evidence of prior use is vague and indefinite. It is not of that high character which convinces the court beyond a reasonable doubt. Proof which does this is always necessary."

Pitts *v.* Hall, 2 Blatch., 229.
Boyd *v.* Cherry, 4 McC., 70.
Graham *v.* McCormick, 10 Biss., 39.
Campbell *v.* James, 17 Blatch., 42.
Washburn & Moen Manufacturing Co. *v.* Haish, 10 Biss., 65.
Telephone Cases, 126 U. S.

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OCTOBER TERM, 1888.

No. 135.

ROBERT H. ANDERSON, APPELLANT,

vs.

HENRY T. MILLER & CO.

BRIEF FOR APPELLEES.

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For Appellees.

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The complainant obtained in October, 1882, a patent for a patch upon drawers, extending from the back of the waist-

band down under the crotch and up in a split form to the waistband in front. Of course it is a patch on new drawers before worn. One of the merits claimed for this patch is that it laps the seam which runs up one leg of the drawers in the inside to the crotch and passes down the other leg. It is said that this seam is very liable to rip open in the crotch, and the drawers, especially of fat men, are liable to tear in that region; and it is claimed that this patch of the complainant so strengthens (or, to use the euphemism of the Patent Office, "re-enforces") both the seam and the drawers as to prevent the catastrophe described, to which they are liable in the crotch.

It strikes me that a patent for a patch upon drawers designed to remedy the evils of rip and tear, to which they are liable in the crotch, ought never to have been granted, interfering, as it must necessarily do, with the prerogative of the housewives of the civilized world to patch the drawers of their husbands, fathers, and sons freely in their own way, with no patentee to molest or make them afraid.

It seems to me that the complainant's patent, No 265,733, for "re-enforcing the seats of men's drawers by a double thickness of material, and also the fork thereof," is the *reductio ad absurdum* of the patent system of the United States.

It is impossible that the patch can be novel as to the simple matter of strengthening the seams and the material of drawers in the immediate region of the crotch; for if drawers do continually give way there it would be a reflection upon the housewives of civilized society, not to admit that for hundreds of years they have been in the habit of patching the garment "and the forks thereof" by lapping the seams and "re-enforcing" the rents in that region. As to the disorders of men's drawers in and near the crotch, which have troubled housewives for centuries, I do not think any person in our day and generation can employ a patch for the purpose of preventing or curing them that can have any real

novelty; and therefore I think the defendants' demurrer to the bill is good.

But even if the patent of complainant were valid as against all other makers and patchers of drawers, it is not good against the defendants in this case.

The especial complaint specified against defendants is that they put a patch on drawers, not consisting, it is true, of the whole invention of complainant, but infringing it in the particular that it laps the seam in the crotch of the drawers by half an inch coming down from the front. But I think the defendants prove, by conclusive evidence, that they actually made drawers on which this seam was lapped, by a patch extending half an inch beyond it from the front, for more than two years before patent No. 265,733 was issued. Their printed order book for drawers shows that they made drawers "re-enfored" in the seat in May, 1880, and some time before; and their cutters and employés, as well as exhibits filed, show that this patch, referred to in the order book for drawers, was one that lapped the seam in the crotch by half an inch and more, and that the drawers which they are now making are, in this respect, just such as they made as early as May, 1880.

I think the bill ought to be dismissed, as not maintainable against these defendants, even if the patent were good against other patchers of drawers.

[Endorsed:] Opinion. Anderson *vs.* Miller & Co. Filed June 6th, '85. This opinion may be filed in the record if either party thereto requests it. Ro. W. Hughes, judge.

Answer to Appellant's Brief.

I.

The discussion as to the defects of answer in averring want of novelty and two years' public use is all aside from the issue tried. The question as to the Levis patent was not in-

volved in the trial. Grant that it was badly plead. No evidence was taken concerning it, and it had no bearing on the decision.

One averment in the answer was plain and distinct—could not have been made plainer—viz., that Henry T. Miller and Henry T. Miller & Co. "have hitherto continuously for over five years manufactured the identical re-enforced drawers filed as Exhibit A, and that for over four years prior to the application for the said patent they used and sold re-enforced drawers of the pattern and design of those now on file as Exhibit 'A' and none others."

Could the English language make an issue plainer? The complainant produces drawers manufactured by the defendants and says: "These drawers, made in Richmond, Va., by H. T. Miller & Co., infringe my patent." The defendants say: "Yes; we made them, and we have made them for many years before your patent was applied for or issued, specifying how long, and your invention is therefore not novel."

How could it be possible to be more specific? It is true they did not say they manufactured them *in Richmond.* Why? Because the complainant himself said that, and they admitted it.

II.

The citations from Silsby *vs.* Foote, and P. and T. R. R. Co. *vs.* Stimpson, and Agawam *vs.* Jordan speak of necessity of particular notice so as to prevent *surprise at trial* at law.

It is true that in Teese *vs.* Huntingdon, 23 Howard, it was said the defendant must give complainant *substantially* the same information in his answer.

That rule applying, what difference does it make how vague our allusions to other defenses were when our plea of our own prior use was so plain and distinct and when all the testimony taken related to that question and none other and the case was argued and decided on that alone?

III.

Suppose the testimony is conflicting and irreconcilable. It is not. There is not a statement of one of Anderson's witnesses that necessarily contradicts Miller's. But suppose the evidence was conflicting. Surely no authority need be cited to sustain the position that the whole matter of law and fact having been submitted to the judge his decision stands as the verdict of a jury, not subject to review as to his conclusions on the facts.

But this brief is already too long.

Respectfully submitted.

JNO. S. WISE,
For Appellees.